INDEX TO APPENDIX

Page

May 9, 1969—Docket Entries—United States District Court for the Central District of California .. 1

Documents Filed in Superior Court of the State of California for the County of Los Angeles:

2-19-69—Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction; and for Specific Performance of Agreement to Arbitrate 4

2-19-69—Declaration of Vern Heaps 35

2-19-69—Order to Show Cause and Temporary Restraining Order 36

2-21-69—Notice of Filing Petition and Bond for Removal 41

Documents Filed in United States District Court, Central District of California:

2-20-69—Petition for Removal Together With Bond for Removal 42

2-24-69—Notice of Motion and Motion to Quash Superior Court Temporary Restraining Order .. 47

2-24-69—Memorandum of Points and Authorities in Support of Motion to Quash Superior Court Temporary Restraining Order and in Support of Order Shortening Time 48

2-26-69—Motion for Order Compelling Arbitration; for Order Requiring Specific Performance of Agreement to Arbitrate; and Application for Preliminary Injunction 50

Page

2-26-69—Supplemental Memorandum of Points and Authorities in Support of Motions to Compel Arbitration; for Specific Performance; and for Preliminary Injunction 53

3-12-69—Findings of Fact and Conclusions of Law 74

3-12-69—Order Directing That Arbitration Proceed and Order Granting Injunction Pending Arbitration 84

3-13-69—Defendant's Answer 89

3-28-69—Notice of Appeal 90

Documents Filed in United States Court of Appeals for the Ninth Circuit:

5-9-69—Index of Transmitted Record 93

9-26-69—Judgment of the United States Court of Appeals for the Ninth Circuit 95

9-26-69—Opinion of the United States Court of Appeals for the Ninth Circuit 96

IN THE

Supreme Court of the United States

October Term, 1969
No. 768

THE BOYS MARKETS, INC.,

Petitioner,

vs.

RETAIL CLERK'S UNION, LOCAL 770,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

APPENDIX.

Docket Entries—United States District Court for the Central District of California.

TITLE OF CASE

The Boys Markets, Inc., a California corporation, Plaintiff, vs. Retail Clerks Union, Local 770, an unincorporated association, Defendant.

ATTORNEYS

For plaintiff: Joseph M. McLaughlin, 627-5237, 655 South Hope St., Suite 700, Los Angeles, Calif. 90017.

For defendant: Arnold, Smith & Schwartz, 653-6510, 6404 Wilshire Blvd., Suite 950, Los Angeles, Calif. 90048.

PETN FOR REMOVAL FR L.A. SUPERIOR COURT COMPLT FOR INJNCTN & FOR SPECIFIC PERFORMANCE OF AGREEMT TO ARBITRATE

PROCEEDINGS

2/20/69—Fld Petn for Removal from State Court for the County of Los Angeles, with copies of the following docs: (1) Ord to show cause & TRO, (2) memo of pts and authors in support of injnctn etc. (3) Declaratn of Vern Heaps (4) summs (5) Complt for TRO, Prelim and Perm injnctn and for specific performance of agreement to arbitrate. Md JS-5. Fld. Bond on removal in the amt of $500.00/

2/24/69—Fld Ord (CC) shortening time for Not of Mot to 3/10/69, 10AM.

2/25/69—Fld Mot & Not of Mot to quash superior court temporary restraining Ord, retnble 3/10/69, 10 am; memo of pts & auths in suppt of Mot and in

suppt of Ord shortng time; affid of Gerald A. W. Haight with certificate of service.

3/3/69—Fld Order (CC) shortening time in wh pltff may serve notc of motn to 3/4/69 & sd motn be hrd 3/10/69, 10am. Fld pltff's motn for Order compelling arbitration; for Order requirg specific performance of agreement to arbitrate; and application for preliminary injunction, w/notc of hrg on motns retnble 3/10/69, 10am. Fld pltffs supplemental memo of pts & auths in support of motns to compel arbitration, etc.

3/13/69—Fld finds of fact & concl of law: Fld ord directing that arbitration proceed and Order grantg inj pending arbitration, fur ord that deft, etc are enjoined from picketing, etc., pending arbitration, etc. (Ent 3/13/69 ntfd prtys) JS-6

3/13/69—Fld deft's ANSWER to Complaint.

3/14/69—Fld deft's NOTICE OF APPEAL. Mld copy to Joseph M. McLaughlin at address is Suite 700, 655 South Hope St., L.A. 90017, copy to (CC) and copy to deft at time of filing. Fld bond on appl in the amt of $250.00.

3/17/69—Fld Bond On injnctn in the amt of $1,000.00.

3/18/69—Fld def's designation of Record on Appeal. Fld statement of pts on which appellant intends to rely on appeal.

3/10/69—Hrg & ent ord denyg mo deft to quash restr ord & ent ord grantg mo plf for arbitration & injunc, & court directs counsel for plt to prep written ord.

3/27/69—Fld def's designation of Record on Appeal.

4/2/69—Fld Deft's NOTICE OF APPEAL. Fld designation of Record on appl. Fld stmt on points on which appellant intends to rely on appl. Fld proof of service on the above docs. (copy of N/A to CC)

4/10/69—Fld def's . supplemental designation of Record on Appeal.

I hereby attest and certify on May 9, 1969 that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

JOHN A. CHILDRESS
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF
CALIFORNIA

By ....., Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

THE BOYS MARKETS, INC., a California corporation,

Plaintiff,

- vs -

RETAIL CLERKS UNION, LOCAL 770, an unincorporated association,

Defendant.

No. 948323

Original Filed Feb. 19, 1969 County Clerk.

Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and for Specific Performance of Agreement to Arbitrate.

Plaintiff complains of defendant and for cause of action alleges:

I

Plaintiff, THE BOYS MARKETS, INC., is now and has been at all times herein mentioned a corporation duly organized and existing under the laws of the State of California.

II

Defendant, RETAIL CLERKS UNION, LOCAL 770, is now and has been at all times herein mentioned, an unincorporated association functioning as a labor organization and affiliated with the RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO. Said defendant may hereinafter be referred to as "Local

770". Local 770 is composed of several thousand members who are employed as Retail Clerks in supermarkets, drug stores, discount stores and other retail establishments and who are represented for collective bargaining purposes by said labor organization. The principal offices of Local 770 are located in the County of Los Angeles, California.

III

Plaintiff owns and operates a chain of approximately 35 retail food supermarkets in and about Southern California, one of which said stores is located at 7230 Atlantic Boulevard, in the City of Cudahy, County of Los Angeles. In each of said supermarkets, plaintiff stocks, displays and sells to its customers a wide variety of groceries, meats, produce, general merchandise and sundry non-food products. Plaintiff employs several hundred retail clerks in said stores who are represented for collective bargaining purposes by defendant Local 770.

IV

On or about April 1, 1964, plaintiff and defendant Local 770 executed and entered into a contract in writing providing for and establishing the wages, hours, benefits and conditions of employment for the employees of plaintiff employed as retail clerks who are represented by Local 770. Said contract, known as the "Retail Food, Bakery, Candy, and General Merchandise Agreement, April 1, 1964—March 31, 1969" was for a five-year term, and is in full force and effect through March 31, 1969. A true and correct printed copy of

said contract is attached hereto as Exhibit "A" and by reference made a part hereof.

For and in consideration of the wages, benefits and conditions of employment required to be provided by plaintiff under and pursuant to the terms of said contract to the employees covered thereby, Local 770 promised, covenanted and agreed that the Union and its members, employees of plaintiff, would not engage in any strike, work stoppage or other concerted economic activity against plaintiff for the term of said collective bargaining agreement. Article XIV, Paragraph D of the contract provides as follows:

"ARTICLE XIV . . .

"D. POWERS, LIMITATIONS AND RESERVATIONS. . . .

"2. Work Stoppages. Matters subject to the procedures of this Article shall be settled and resolved in the manner provided herein. During the term of this Agreement, *there shall be no cessation or stoppage of work, lock-out, picketing or boycotts,* except that this limitation shall not be binding upon either party hereto if the other party refuses to perform any obligation under this Article or refuses or fails to abide by, accept or perform a decision or award of an arbitrator or board." (Emphasis added).

In further such consideration, Local 770 promised, covenanted and agreed that any and all controversies, disputes and disagreements of any kind or character between them arising out of or in any way involving

the interpretation or application of the terms of said contract, which could not be mutually resolved or settled, would be submitted to an impartial arbitrator for binding determination. Article XIV, Paragraphs "A" and "C" of said contract provide as follows:

"ARTICLE XIV

"ADJUSTMENT AND ARBITRATION

"A. CONTROVERSY, DISPUTE OR DISAGREEMENT. *Any and all matters of controversy, dispute or disagreement* of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of this Agreement, except as may be otherwise provided in Paragraph D of this Article, shall be settled and resolved by the procedures and in the manner hereinafter set forth." (Emphasis added).

"B. ADJUSTMENT PROCEDURE. . . .

"C. ARBITRATION. . . .

"4. The arbitrator or board of arbitration shall be empowered to hear and determine the matter in question and the determination shall be final and binding upon the parties, subject only to their rights under law. The hearings shall be held within thirty (30) days after the selection of the arbitrator, or board, which shall have the power to decide the date or dates upon which the arbitration is to be held if agreement cannot be reached by the parties."

V

On Tuesday, February 18, 1969, plaintiff and defendant became involved in a controversy, dispute and disagreement over and concerning the performance of certain work in plaintiff's supermarket located at 7230 Atlantic Boulevard, Cudahy, California. Plaintiff's frozen foods supervisor and his crew had commenced revamping the display of frozen food products in four frozen food cases located within said market. The physical location of various products already in the cases was changed and the display was revised in order to be more attractive to customers. Representatives of Local 770 objected to the fact that this work was being performed by plaintiff's supervisor and his crew, and demanded that the said frozen food cases be stripped of all merchandise by plaintiff's retail clerks; that the merchandise be returned to the main freezer room in the back room of the store; and that members of the Union be required to entirely restock and redisplay the merchandise in the cases. Said representatives threatened that if their demands were not met, the Union would engage in a strike against plaintiff; would require all of plaintiff's retail clerks to leave their employment and engage in a strike and that the union would picket plaintiff's said store.

VI

Plaintiff, acting in the good-faith belief that it had not breached or violated any of the provisions of its contract with Local 770, refused to agree to the demands of the representatives of said Union. Thereupon, at approximately 3:15 P.M. of said day, Local 770's representatives ordered, instructed and required all of the retail clerks employed by plaintiff in said store to

leave their employment and to engage in a strike and work stoppage in breach and violation of their contract with plaintiff. All of said employees immediately ceased to perform their work for plaintiff and left the store. Local 770 established a picket line on and about the premises of plaintiff's store. The pickets carried picket signs reading:

"LOCAL 770
THIS STORE ON STRIKE
PLEASE RESPECT OUR PICKET LINES"

Other representatives of Local 770 stationed themselves in front of the entrances to the said store of plaintiff and falsely stated to customers and potential customers of plaintiff that the store was "closed" and that there was "no service" in the store.

Said strike, work stoppage and picketing continued on Wednesday, February 19, 1969. On said date the representatives of Local 770 repeatedly told customers of plaintiff not to come in plaintiff's said store and to take their patronage to plaintiff's competitors. Said representatives stationed themselves directly in front of the entrances to plaintiff's store and impeded and blocked customers attempting to enter. Furthermore, said representatives encouraged and persuaded employees of plaintiff's suppliers not to deliver products to plaintiff's store.

VII

The strike and work stoppage engaged in by Local 770 and its members, employees of plaintiff, which commenced on February 18, 1969, and continues to the time of filing of this complaint, was and is in substantial and material breach of defendant's contract with plaintiff and of the "no-strike" and arbitration provisions

thereof. The controversy, dispute and disagreement between plaintiff and defendant concerning the performance of work within plaintiff's said store clearly involves the interpretation and application of the provisions of their contract and is thereby required by the express terms of said contract to be submitted for determination to binding arbitration without such strike and work stoppage.

VIII

As a direct and proximate result of the strike, picketing and work stoppage engaged in by defendant, plaintiff has suffered and continues to suffer substantial and serious loss of business and customer patronage, all to plaintiff's damage and injury.

By reason of said strike and work stoppage, defendant has caused plaintiff to be unable to properly and adequately replenish and stock the shelves and racks of said store with merchandise. Further, defendant has prevented plaintiff's retail clerks from being on duty to serve its customers, and check them out at the cash registers. The inability of customers to purchase desired products in plaintiff's store and to be served and waited upon by plaintiff's employees has serious economic consequences to plaintiff's business in that plaintiff may lose the valued patronage and good will of unknown numbers of customers who, being unable to shop at plaintiff's store or being reluctant to cross defendants picket line, take their patronage to plaintiff's competitors, and plaintiff may lose their business and patronage forever.

IX

By reason of the strike, picketing and work stoppage engaged in by Local 770 and its members, plaintiff has

sustained great and irreparable injury and, so long as said strike, picketing and work stoppage is permitted to continue, will continue to sustain great and irreparable injury in that plaintiff will be unable to serve its customers and will lose the patronage of customers who will take their trade to plaintiff's competitors because of plaintiff's lack of employees and of the picket line at plaintiff's premises.

X

Plaintiff has observed and performed all of the terms and conditions of its contract, on its part to be observed and performed. Immediately upon the commencement of the strike, picketing and work stoppage by Local 770 and its members, employees of plaintiff, plaintiff caused a telegram to be sent to said Union demanding that the said dispute be submitted to arbitration and that defendant cease and desist from the strike and work stoppage, all as required by the contract between the parties. Local 770 failed and refused, and continues to fail and refuse to agree to arbitrate the said dispute and to end its strike and picketing. A true copy of the said written demand is attached hereto as Exhibit "B" and by reference made a part hereof.

XI

By reason of the acts and conduct of Local 770 and its members, plaintiff will suffer damage of not less than $5,000.00 each day, and, if these acts are permitted to continue, will be further damaged in an amount that is difficult, if not impossible, for plaintiff to ascertain.

It will be practically impossible for plaintiff to ascertain the exact amount of damage and injury which

plaintiff will sustain if defendant and its members are not enjoined from the continuance of these acts. Therefore, plaintiff cannot be fully compensated in damages and is without any plain, speedy or adequate remedy at law.

WHEREFORE, plaintiff prays judgment against defendant as follows:

1. For an Order of the Court directing and commanding defendant, its agents and representatives, to specifically perform their agreement to arbitrate and to forthwith submit the said controversy, dispute and disagreement to binding determination by an impartial Arbitrator in accordance with the terms and provisions of Article XIV of the collective bargaining contract in effect between plaintiff and defendant.

2. For a temporary restraining order, preliminary injunction and permanent injunction enjoining and restraining defendant, its agents, representatives, members and all persons acting in concert and participation with them, and each of them, from doing or causing to be done, directly or indirectly, by any manner or device whatsoever, any of the following acts or things:

(a) Picketing at, around or in the vicinity of the premises of plaintiff's retail supermarket located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or any other supermarket of plaintiff.

(b) Carrying or displaying signs or placards which state in any manner that plaintiff's employees are on strike or requesting in any manner customers or potential customers not to patronize plaintiff or its supermarkets, or which, in any manner, infer that a strike

or labor dispute against or involving plaintiff is in progress.

(c) Engaging in any strike, concerted work stoppage or other economic activity at or about the premises of plaintiff's retail store located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or at any other supermarket of plaintiff.

(d) Inducing, instructing, persuading or encouraging plaintiff's employees, or any of them, to engage in a strike, work stoppage, picketing or other economic activity against plaintiff or to fail or refuse to perform their work and services in a regular and normal manner for plaintiff.

(e) From stating to or informing customers or potential customers of plaintiff that plaintiff's employees are on strike or that plaintiff's store at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, is closed or that there is no service in plaintiff's food store or from in any maner persuading, inducing or encouraging or attempting to persuade, induce or encourage plaintiff's customers or potential customers not to patronize plaintiff or to patronize plaintiff's competitors.

(f) From blocking, obstructing or impeding or attempting to block, obstruct or impede the ingress or egress of customers and potential customers to and from plaintiff's said store or at any other supermarket of plaintiff.

(g) From intimidating, inducing, persuading or encouraging or from attempting to intimidate, induce, persuade or encourage employees of suppliers of plain-

tiff to refuse to deliver goods and merchandise to plaintiff's said store.

3. For an order of this Court directing that defendant show cause, if any it has, at a time and place to be fixed by the Court, why a preliminary injunction should not issue, as prayed for herein.

4. For plaintiff's costs of suit herein.

5. For such other and further relief as may be deemed just and proper.

DATED: February 19, 1969.

* * *

Attorneys for Plaintiff.

(Verification Omitted in Printing)

EXHIBIT A.

RETAIL FOOD, BAKERY, CANDY, AND GENERAL MERCHANDISE AGREEMENT

APRIL 1, 1964—MARCH 31, 1969

between

RETAIL CLERKS UNION, LOCAL 770

1515 North Vermont Avenue
Los Angeles, California 90027

and

FOOD EMPLOYERS COUNCIL, INC.

2599 South Flower Street
Los Angeles 7, California

and

INDEPENDENT RETAIL OPERATORS

ARTICLE I

RECOGNITION OF THE UNION

A. BARGAINING UNIT.

1. The Employer recognizes the Union as the sole collective bargaining agent with respect to work, rates of pay, hours, and terms and conditions of employment for the appropriate bargaining unit composed of all employees, including employees of lessees, licensees and concessionaires (sometimes herein referred to as "leased departments"), except as limited below, who perform work within food markets, discount stores drug stores, and shoe stores presently operated and hereafter established, owned or operated by the Employer within the territorial jurisdiction of the Local Union. Food markets are defined as those types of establishments covered by collective bargaining agreements identified as Retail Food, Bakery, Candy and General Merchandise Agreement, January 1, 1959, to March 31, 1964.

2. All work or services, not specifically excluded by this Agreement, is hereby recognized as bargaining unit work. Such bargaining unit work shall neither be subcontracted nor performed by any person not a member of the bargaining unit.

3. The Employer agrees that any employees performing bargaining unit work set forth in this Agreement, within its establishments, including employees of lessees, licensees, and concessionaires shall be members of a single, overall unit, and the Employer will at all times exercise and retain full control of the terms and conditions of employment within its establishments of all such employees pursuant to this Agreement, and

shall not enter into or maintain and enforce any lease or other agreement inconsistent with the provisions hereof. The Employer's obligation with respect to operators of leased departments is limited to that set forth above, provided that the Employer shall furnish to the Union written evidence that the operator of the leased department has assumed such obligation. With respect to concessionaires, such as rack jobbers, who do not have a fixed retail place of business, the Employer shall have the Concessionaire Agreement, a sample of which is attached as Appendix B, executed by the concessionaire or his designated agent. Provided the Employer fulfulls his obligation as set forth above, the Employer shall not be liable for any breach of contract or failure of leased department to abide by the wages, hours and working conditions set forth in this Agreement. The seniority of employees of leased departments shall be separate from the seniority of employees of the Employer and of employees of other leased departments.

4. In the event that the Employer establishes a new department or creates new work or enters into any lease, license agreement, or concession agreement involving the performance of any new work in any of the stores or establishments operated by the Employer which are covered by this Agreement, for which wages are not specifically provided in this Agreement, it is agreed that, should the parties be unable to reach agreement upon wages for such work, the parties shall then submit the matter to arbitration in accordance with Article XIV of this Agreement, notwithstanding in this situation any provisions to the contrary contained therein, and shall be bound by the terms of the arbitration award.

5. In the event the signatory Employer should operate discount stores, drug stores, or shoe stores within the territorial jurisdiction of the Local Union, the appropriate terms and conditions of employment, as in existence with the other employers operating alike retail establishments, shall be immediately applied by the signatory Employer, except in those marketing areas where Local Unions 137, 899 and 1167 have not established a prevailing scale through a collective bargaining agreement. In that event, the Employer and such Local Union shall negotiate an equitable rate for said store or stores which shall remain in effect subject to the usual reopening of the contract for further negotiations, or until such time as the Union is able to establish with other competitive employers higher prevailing wage rates and conditions which shall then become applicable. Upon failure of the parties to agree on the wage rates, the rates shall be established by arbitration, again notwithstanding in this situation any provisions to the contrary contained therein.

6. It is recognized by the Employer and the Union that the bargaining unit as defined hereinabove is composed of several segments consisting of food markets, discount stores, drug stores, and shoe stores. With reference to such segments, it is agreed that negotiations shall be conducted in each segment, separate and apart from any other segment, and that any economic action undertaken by the Union or Employer shall not extend to or include. or in any way involve any other segment. It is further agreed that with reference to any segment, the Employer may join with any other employers in any collective bargaining negotiations covering such segment and may participate fully therein, in-

cluding participation in any economic action which may occur, subject to the limitations hereinabove set forth regarding non-involvement of other segments.

7. It is agreed that the provisions of Article I relating to the performance of work by persons other than employees of the Employer shall not become applicable or effective until July 1, 1964, and neither shall the provisions relating to the including of Drug, Discount and Shoe segments.

8. No restrictions or prohibitions shall be placed on the sale of any pre-packaged or pre-treated merchandise purchased from any source not directly related through ownership or management control to the Employer. It is understood, however, that the work involved in the sale of such merchandise will be performed in accordance with this Agreement.

B. FOOD MARKETS SEGMENT EXCLUSIONS.

Excluded from the segment for food markets are:

1. Persons exclusively working in a meat department, as defined by and resulting from that agreement of December 12, 1955, between the Retail Clerks International Association and the Amalgamated Meat Cutters and Butcher Workmen of North America.

2. Persons engaged exclusively in janitorial and/or maintenance work.

3. Persons presently under a collective bargaining agreement with the Culinary Workers Union, or persons employed in a complete restaurant.

4. Persons who confine their work solely to demonstration, offering of samples, assisting customers in the

selection of merchandise being demonstrated, and activities of an advertising nature.

5. Persons who build promotional displays as long as such displays do not include merchandise for selection or pick-up by customers.

6. During any three (3) consecutive days preceding the opening of a new store, or a re-opening of an old store which has been closed for remodeling, by prior notice to the Union, persons not in the bargaining unit may perform any work in such store, provided the Department of Employment is requested to furnish applicants to fill regular job vacancies pursuant to Article II.

7. The taking of inventories may be done by employees or persons who are not members of the bargaining unit and who are engaged exclusively in such work, provided that any such employees will become a part of the bargaining unit upon the signatory Union giving proof (cross-check) of its majority representation of such employees.

8. When the remodeling of an existing location occurs without such store being closed, the operating Employer shall give the members of the bargaining unit employed by him, within a reasonable area surrounding the location in question, an opportunity to perform the work required for such remodeling at the applicable contract rate. When members of the bargaining unit are not available for such work, such work may be performed by persons not in the bargaining unit.

9. Persons engaged in the inspection of merchandise displayed for sale as to its condition or status of inventory for the purpose of recommending changes to be made or services to be performed by the employees within the bargaining unit.

10. Store office employees whose work is not directly connected to checkstand operation or procedures.

11. Employees of suppliers engaged in the handling of the following categories of merchandise:

(a) Bread and cakes, when delivered by bakery drivers.

(b) Potato chips, corn chips, and similar snack items, but no other delicatessen products.

(c) Bulk and cello-wrapped candy when delivered by sales drivers.

(d) Items requiring immediate referigeration may be placed under refrigeration but not displayed.

12. Over-All Store Manager.

a. *Operation* a. Except as set forth in Paragraph b below, only one person commonly known as the over-all store manager in each of the retail stores or store of the Employer is exempt from the present Agreement. The above provisions shall not apply to any person not having the full responsibility of management over all departments operated by the owner, nor shall it apply where the owner is actively engaged on the premises in the management of said store where there are three (3) or less persons employed. Except as set forth in Paragraph (b) below, nothing in this Agreement shall in any way be construed to interfere with any work which the over-all store manager may perform.

b. *Operation* b. The Employer shall have the right at his discretion to employ in any individual store a manager and an assistant manager who shall be excluded from the bargaining unit, provided that in such instance neither of these employees shall be permitted

to perform any work whatsoever beyond the supervision or direction of the bargaining unit employees. The permanent choice of either system shall be made by the employer in writing to the Union no later than sixty (60) days after the effective date of this Agreement, or sixty (60) days after the opening of any new store. The choice of either (a) or (b) operation as hereinabove defined may be altered on the annual anniversary date of this Agreement. Operation (b) shall not apply to any store with less than ten (10) bargaining unit employees, excluding clerk's helpers.

c. Concessionaires, such as rack jobbers, who do not have a fixed retail place of business, and who employ traveling personnel who perform bargaining unit work, shall not be entitled to (a) and (b) above. However, supervisory employees of such concessionaires shall be excluded from the bargaining unit, provided that such supervisors shall not be permitted to perform any bargaining unit work. The operator of any concession not having a fixed retail place of business, such as rack jobbers, shall not be permitted to perform any bargaining unit work unless such operator employ one or more employees who perform bargaining unit work, or unless he achieves employee status.

C. DISCOUNT STORES SEGMENT EXCLUSIONS.

Exclusions from the bargaining unit with respect to employees employed in discount stores are as set forth in the appropriate agreement.

D. DRUG STORES (OR DEPARTMENTS) SEGMENT EXCLUSIONS.

Exclusions from the bargaining unit with respect to employees employed in drug stores (or departments) are as set forth in the appropriate agreement.

E. SHOE STORES (OR DEPARTMENTS) SEGMENT EXCLUSIONS.

Exclusions from the bargaining unit with respect to employees employed in shoe stores (or departments) are as set forth in the appropriate agreement.

F. CATEGORIES OF EMPLOYEES—FOOD MARKET SEGMENT.

There shall be estabished by this Agreement four (4) categories of employees to be identified as follows:

1. *Food or Grocery Clerk.* Subject to the exclusions from the bargaining unit described above, a Food or Grocery Clerk is an employee who handles all foodstuffs, including liquor and other beverages, nursery items behind the checkstands, all household paper goods, insecticides and all household cleaning and laundry supplies. Store office employees whose work is directly connected to checkstand procedures or operations are also included in this category, as are traveling clerks of concessionaires who service health and beauty aids and houseware items or similar line or lines of merchandise.

2. *General Merchandise Clerk.* Subject to the exclusions from the bargaining unit described above, a General Merchandise Clerk is one who handles any merchandise other than that included in the definition of Food and Grocery Clerk, provided, however, that the General Merchandise Clerk also includes one who handles bakery goods in a bakery department as defined in Article XXII, bulk or cello-packed candy, tobacco (except where the tobacco is displayed at the checkstand and the liquor departments), and service delicatessen and take-out food departments as set forth in Article VI, Paragraph S-3.

3. *Clerk's Helper.* A Clerk's Helper is an employee whose duties do not include any of the work of a regular clerk. Clerk's Helpers may perform cleanup work. Clerk's Helpers may keep the checkstands stocked with supplies, such supplies not to include merchandise offered for sale. Clerk's Helpers may handle merchandise after it has become the property of the customer, and may also assist the checker or cashier in removing merchandise from the baskets or pushcarts and may return carrybacks to the shelves. Clerk's Helpers may collect and line up pushcarts or baskets and return them to the market, and may keep the parking lot orderly and free from refuse. Clerk's Helpers may carry empty bottles to a collection point, sort, and account for same, and may also carry refuse to a point of disposal. Clerk's Helpers may hang signs. The work to be performed by Clerk's Helpers is limited to the duties set forth in this paragraph.

4. *Snack Bar and Take-Out Food Department Employees.* Snack Bar and Take-Out Food Department Employees are employees whose duties include solely the work set forth in Article VI, Paragraphs S-1, 2 and 6.

G. UNION JURISDICTION.

During the life of this Agreement, the Union will not engage in jurisdictional disputes on the premises of the Employer's places of business.

[Articles II Through XIII Omitted]

ARTICLE XIV

ADJUSTMENT AND ARBITRATION

A. CONTROVERSY, DISPUTE OR DISAGREEMENT.

Any and all matters of controversy, dispute or disagreement of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of this Agreement, except as may be otherwise provided in Paragraph D of this Article, shall be settled and resolved by the procedures and in the manner hereinafter set forth.

B. ADJUSTMENT PROCEDURE.

1. *Store Level.* The Union through its representatives shall attempt to settle or resolve any such matter with the appropriate store supervisor or person designated by the Employer in the manner indicated in Article X of this Agreement.

2. *Meeting of Representatives.* Upon receipt of a written notice from either party, the representatives of the Employer and the representatives of the Union shall meet within a calendar week and attempt to settle or resolve the matter.

3. *Food Employers Council, Inc.* The Union hereby recognizes the Food Employers Council, Inc. as the authorized representative of its members in matters pertaining to the negotiation and administration of this Agreement. In the event of a dispute, it shall be the duty of the Employer to notify the Food Employers Council, Inc. of the existing dispute if said Employer desires said Food Employers Council, Inc. to represent it in the dispute. Should a grievance or dispute be

settled between the Union and any Employer signatory to this Agreement without the participation of the Food Employers Council, Inc. and if in such settlement, an interpretation of any language or phrase of this Agreement is involved in order that such settlement be reached, the Union shall, within ten (10) days of such settlement notify Food Employers Council, Inc., in writing of the dispute, the language or the phrase interpreted, the settlement reached, and the date of such settlement. Should the Union fail to notify the Food Employers Council, Inc., as set forth above, the fact of settlement and the interpretation of the language or phrase of the Agreement involved in the settlement shall not be used in evidence for any purpose whatsoever. No such settlement or interpretation shall be binding upon the Food Employers Council, Inc. or its members unless the Council or its members thereof participated in arriving at such settlement or interpretation.

C. ARBITRATION.

1. Any matter not satisfactorily settled or resolved in Paragraph B hereinabove shall be submitted to arbitration for final determination upon written demand of either party. The written demand for arbitration may be made at any time after the expiration of fifteen (15) days from the date of notice, submitted the matter under Paragraph B, subsection 2, hereinabove, to the meeting of representatives.

2. The representatives of the Union and the representatives of the Employeer shall meet for the purpose of selecting an impartial arbitrator within the ten (10) day period following the demand for arbitration. If no

agreement upon an arbitrator is reached during this period, either party may then request a list of fifteen (15) persons qualified to act as arbitrators under this Agreement, from the Federal Mediation and Conciliation Service and upon receipt of this list the parties shall immediately thereafter select the arbitrator by alternately striking names from the list until the last name remains. The parties shall draw lots to determine who shall make the first deletion from the list.

3. Should either party desire, a board of arbitration shall be convened in lieu of a single arbitrator, consisting of an equal number of arbitrators appointed by each party (not to exceed two appointed by each) and the impartial arbitrator who shall be chairman. The board shall hear and determine the matter by majority vote of the members of the board.

4. The arbitrator or board of arbitration shall be empowered to hear and determine the matter in question and the determination shall be final and binding upon the parties, subject only to their rights under law. The hearings shall be held within thirty (30) days after the selection of the arbitrator, or board, which shall have the power to decide the date or dates upon which the arbitration is to be held if agreement cannot be reached by the parties.

D. POWERS, LIMITATIONS AND RESERVATIONS.

1. Arbitrator. The arbitrator or board of arbitration shall not have the authority to decide questions involving the jurisdiction of any local, or of the International, or which may in any way affect or change the Union Security clause, nor shall the arbitrator or board of arbitration have the authority to effect a

change in, modify, or amend any of the provisions of this Agreement, or to make decisions on provisions covering wages or working conditions to be incorporated either in a new agreement or any subsequent annual agreement. If a question of the arbitrability of an issue is raised by either party, such question shall be determined in the first instance by the arbitrator or board. Neither party to this Agreement shall refuse to proceed to arbitration upon the grounds that the matter in question is not arbitrable.

2. Work Stoppages. Matters subject to the procedures of this Article shall be settled and resolved in the manner provided herein. During the term of this Agreement, there shall be no cessation or stoppage of work, lock-out, picketing or boycotts, except that this limitation shall not be binding upon either party hereto if the other party refuses to perform any obligation under this Article or refuses or fails to abide by, accept or perform a decision or award of an arbitrator or board.

3. Wage Claims. In the case of a direct wage claim or a claim for contributions to employee benefit plans which does not involve an interpretation of any of the provisions of this Agreement, either party may submit such claim for settlement to either the grievance procedure provided for herein or to any other tribunal or agency which is authorized and empowered to effect such a settlement.

E. STATUS QUO.

During the period of adjustment or arbitration as provided in this Article, the conditions in effect at the time of receipt of written notice, specified in Para-

graph C above, shall continue in effect pending final decision.

F. EXPENSES.

The expenses of the arbitrator shall be borne equally by both the Employer and the Union.

G. TIME LIMITS.

The time limits set forth above may be extended by mutual agreement between the parties.

H. REPORTING DISCREPANCIES.

It shall be the responsibility of the employee to report any claimed discrepancy to the Union promptly upon discovery, and it shall then become the responsibility of the Union to notify the Employer promptly of such claimed discrepancy. In any event, all complaints must be filed in writing within thirty (30) days after the matter in dispute or disagreement is first reported to the Union. Complaints not filed within the limits herein specified shall be deemed null and void.

[Articles XV Through XXVI Omitted]

EXHIBIT "B".

WESTERN UNION
TELEGRAM

FEBRUARY 18, 1969

JOSEPH T. DeSILVA, EXECUTIVE SECRETARY
RETAIL CLERKS UNION LOCAL 770
1515 N. VERMONT AVENUE
LOS ANGELES, CALIFORNIA 90027

RE: BOYS MARKET. TODAY, YOUR UNION INDUCED A STRIKE AND WORK STOPPAGE AT THE BOYS MARKET AT FLORENCE AND ATLANTIC IN BELL GARDENS BECAUSE OF A DISPUTE WHICH YOUR UNION RAISED CONCERNING THE STOCKING OF CERTAIN FROZEN FOOD CASES IN THE STORE, AND AT THIS TIME YOU HAVE THREATENED TO CAUSE SIMILAR WORK STOPPAGES AT OTHER BOYS MARKETS. THIS DISPUTE INVOLVES THE INTERPRETATION AND APPLICATION OF THE LABOR AGREEMENT, AND THE EMPLOYER CONTENDS THAT ITS ACTION IS ENTIRELY PROPER AND APPROPRIATE UNDER THAT AGREEMENT. YOUR UNION APPARENTLY CONTENDS THAT THE EMPLOYER'S CONDUCT IS A BREACH OF THE AGREEMENT. AS YOU WELL KNOW, THE LABOR AGREEMENT REQUIRES THAT ALL CONTROVERSIES, DISPUTES AND DISAGREEMENTS INVOLVING THE INTERPRETATION OR APPLICATION OF THE AGREEMENT BE RESOLVED THROUGH ARBITRATION. ARTICLE XIV D2 SPECIFICALLY PRO-

HIBITS STRIKES, WORK STOPPAGES AND PICKETING. YOUR ACTION IS A MOST SERIOUS BREACH OF THE LABOR AGREEMENT, AND YOU WILL BE HELD LIABLE FOR ALL DAMAGES TO THE FULLEST EXTENT PROVIDED BY LAW. THIS IS TO DEMAND ON BEHALF OF BOYS MARKETS THAT YOU IMMEDIATELY CEASE YOUR ILLEGAL STRIKE AND WORK STOPPAGE AND SUBMIT THE DISPUTE TO THE GRIEVANCE AND ARBITRATION PROCEDURE PROVIDED FOR IN ARTICLE XIV. THE ADJUSTMENT PROCEDURE OF ARTICLE XIV IS HEREBY INVOKED, AND YOU ARE NOTIFIED THAT REPRESENTATIVES OF THE EMPLOYER STAND READY TO MEET IMMEDIATELY WITH RESPECT TO THIS MATTER.

ROBERT K. FOX, PRESIDENT
FOOD EMPLOYERS COUNCIL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

(Title Omitted in Printing)

No. 948323

Declaration of Vern Heaps.

State of California, County of Los Angeles—ss.

I, VERN HEAPS, say that:

I am employed by The Boys Markets, Inc. in the capacity of Frozen Food Supervisor. On Tuesday, February 18, 1969, I was performing my duties at the Boys Markets' supermarket located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, State of California, at the intersection of Florence Avenue and Atlantic Boulevard. At this time, with a crew of five other men, I was revamping the merchandise in four frozen food cases located along one of the aisles of this store. We were moving frozen meat and fish products from one end of these cases to the other end and relocating various other types of products within the cases. This was a clean-up program for the purpose of properly displaying the merchandise in the freezer cases and removing certain merchandise which had not been sold within the proper time.

At approximately 10:00 A.M., I noticed two men come into the store. Although I do not know their names, I recognized these men as business agents of Retail Clerks Union Local 770. After a short period, they left the store. Later in the day, during the lunch

hour, thirteen individuals came into the store. I recognized one of them as Mr. Sam Matelson, who is the President of Retail Clerks Union Local 770. I asked Mr. Matelson if I could help him. He responded by asking to see my union card, and I informed him that I did not have one and that I was the Frozen Food Supervisor. Mr. Matelson then stated, "We are from the Union, and the rest of the business agents are on stand-by." He then wanted to know where the rest of my group were, and I informed him that they were at lunch. Mr. Matelson then told me to have them stay around when they returned from lunch, because "We've got something going here".

Later, Mr. Matelson told Mr. Robert Slater, the Store Manager of this store, that he didn't like what was going on in the store, and that we should not be stocking the merchandise in the cases.

Following this conversation, the union representatives made a telephone call to the union office. After the lapse of some period of time, a telephone call came from the union. Immediately after this telephone call, Mr. Matelson and the other representatives informed Mr. Slater that the union's position was that unless we removed all of the merchandise from the four frozen food cases, took it back to the frozen food freezer in the back of the store and then had the cases restocked by retail clerks, the union would pull the crew and commence picketing the store. He was informed that the Company would not agree to these conditions. Immedi-

ately thereafter, Mr. Matelson and the union representatives went through the store and told all of the retail clerks to lock up and leave the store. At that time, there were twelve employees on duty in the grocery department, produce department, delicatessen, general merchandise department and warehouse who were members of the Retail Clerks Union. All twelve of these employees immediately left their employment and went outside into the parking lot. This occurred at approximately 3:15 P.M. in the afternoon on Tuesday, February 18, 1969.

The business agents for Local 770 stationed themselves at various locations on the sidewalk immediately in front of the store and commenced telling customers who were attempting to enter the store that the store was "closed" or that there was "no service" in the store. At the same time, I observed seven of these business agents picketing the store along the sidewalk and at the entrance to the automobile parking lot. These pickets were carrying signs which read as follows:

"LOCAL 770
THIS STORE ON STRIKE
PLEASE RESPECT OUR PICKET LINES"

On several occasions, the representatives of Local 770 demanded that as a condition of ending the strike the retail clerks would have to totally strip all four frozen food cases, take all of the merchandise in these four cases back to the freezer and then entirely restock the cases again. Later, we were informed that we could do this on a case-by-case basis as to each of the four cases. On this day, the store had available and on duty only two clerks who could perform this task. Because

of the size of the frozen food display cases involved and the amount of merchandise that would have to be moved out of the cases, back to the freezer and then returned and restocked in the cases, it would have taken us twelve hours to perform this work.

Because of the picketing and the statements made by the business agents that the store was closed or that there was no service in the store, the store suffered substantial loss of business. Very few customers came into the store, and for a considerable period of time, I observed that we had no more than one or two customers in the entire store.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on February 19, 1969, at Los Angeles, California.

/s/ Vern Heaps
VERN HEAPS

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

(Title Omitted in Printing)

No. 948323

Order to Show Cause and Temporary Restraining Order.

On reading the verified Complaint on file in this action and the supporting declaration and the memorandum of points and authorities, it appears to the satisfaction of the Court that this is a proper case for granting an Order to Show Cause and Temporary Restraining Order, and that unless a Temporary Restraining Order is granted as prayed for, plaintiff will suffer great and irreparable injury before the matter can be heard on notice. Good cause appearing:

IT IS ORDERED that defendant shall appear before this Court in Department 65 thereof on the 5th day of March, 1969, at the hour of 9:30 o'clock A.M., then and there to show cause, if any, why defendant, its officers, agents, representatives, members, employees, attorneys, and each of them, and all persons acting in aid or in concert with defendant, should not be enjoined and restrained, pending final determination of this action, from doing or attempting to do, or threatening to do, and from causing to be done, either directly or indirectly, by any means, method or device whatsoever, any and all of the following acts:

(a) Picketing at, around or in the vicinity of the premises of plaintiff's retail supermarket located at 7230 Atlantic Boulevard in the City of Cudahy, County of

Los Angeles, California, or any other supermarket of plaintiff.

(b) Carrying or displaying signs or placards which state in any manner that plaintiffs employees are on strike or requesting in any manner customers or potential customers not to patronize plaintiff or its supermarkets, or which, in any manner, infer that a strike or labor dispute against or involving plaintiff is in progress.

(c) Engaging in any strike, concerted work stoppage or other economic activity at or about the premises of plaintiff's retail store located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or at any other supermarket of plaintiff.

(d) Inducing, instructing, persuading or encouraging plaintiff's employees, or any of them, to engage in a strike, work stoppage, picketing or other economic activity against plaintiff or to fail or refuse to perform their work and services in a regular and normal manner for plaintiff.

(e) From stating to or informing customers or potential customers of plaintiff that plaintiff's employees are on strike or that plaintiff's store at 7230 Atlantic Boulevard in Cudahy, California, is closed or that there is no service in plaintiff's food store or from in any manner persuading, inducing or encouraging or attempting to persuade, induce or encourage plaintiff's customers or potential customers not to patronize plaintiff or to patronize plaintiff's competitors.

(f) From blocking, obstructing or impeding or attempting to block, obstruct or impede the ingress or

egress of customers and potential customers to and from plaintiff's said store or at any other supermarket of plaintiff.

(g) From intimidating, inducing, persuading or encouraging or attempting to intimidate, induce, persuade or encourage employees of suppliers of plaintiff to refuse to deliver goods and merchandise to plaintiff's said store.

IT IS FURTHER ORDERED that defendant, its officers, agents, representatives, members, employees, attorneys, and each of them, and all persons acting in aid or in concert with defendant, be and they hereby are enjoined and restrained, pending the hearing on this Order to Show Cause, from doing or attempting to do, or threatening to do, and from causing to be done, either directly or indirectly, by any means, method or device whatsoever, any and all of the following acts in connection with, related to or in furtherance of a strike or work stoppage against plaintiff involving the pending dispute as to the stocking of frozen foods:

(a) Picketing at, around or in the vicinity of the premises of plaintiff's retail supermarket located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or any other supermarket of plaintiff.

(b) Carrying or dispaying signs or placards which state in any manner that plaintiff's employees are on strike or requesting in any manner customers or potential customers not to patronize plaintiff or its super-

markets, or which, in any manner, infer that a strike or labor dispute against or involving plaintiff is in progress.

(c) Engaging in any strike, concerted work stoppage or other economic activity at or about the premises of plaintiff's retail store located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or at any other supermarket of plaintiff.

(d) Inducing, instructing, persuading or encouraging plaintiff's employees, or any of them, to engage in a strike, work stoppage, picketing or other economic activity against plaintiff or to fail or refuse to perform their work and services in a regular and normal manner for plaintiff.

(e) From stating to or informing customers or potential customers of plaintiff that plaintiff's employees are on strike or that plaintiff's store at 7230 Atlantic Boulevard in Cudahy, California, is closed or that there is no service in plaintiff's food store or from in any manner persuading, inducing or encouraging or attempting to persuade, induce or encourage plaintiff's customers or potential customers not to patronize plaintiff or to patronize plaintiff's competitors.

(f) From blocking, obstructing or impeding or attempting to block, obstruct or impede the ingress or egress of customers and potential customers to and from plaintiff's said store or at any other supermarket of plaintiff.

(g) From intimidating, inducing persuading or encouraging or attempting to intimidate, induce, persuade or encourage employees of suppliers of plaintiff to refuse to deliver goods and merchandise to plaintiff's said store.

IT IS FURTHER ORDERED that a copy of the Summons and Complaint, declaration and points and authorities, together with a copy of this Order to Show Cause and Temporary Restraining Order, be served on the defendant not later than the 26 day of February, 1969.

DATED: February 19th, 1969.

$1,000.00 Bond
Corporate Surety

/s/ Richard Schauer
JUDGE

(Bond Omitted in Printing)

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

(Title Omitted in Printing)

No. 948 323

Notice of Filing Petition and Bond for Removal.

TO: PLAINTIFF, THE BOYS MARKETS, INC., A CALIFORNIA CORPORATION, AND TO JOSEPH M. McLAUGHLIN, ITS ATTORNEY:

PLEASE TAKE NOTICE that defendant, Retail Clerks Union, Local 770, did on February 20, 1969, file in the United States District Court, Central District of California, its Petition for Removal of the above-captioned Superior Court case from the Superior Court of the State of California for the County of Los Angeles, to the said United States District Court, Central District of California, together with Bond for Removal, true copies of which are annexed to a copy of this Notice served upon you.

Dated: February 21, 1969.

* * *

Attorneys for Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

The Boys Markets, Inc., a California corporation, Plaintiff, vs. Retail Clerks Union, Local 770, an unincorporated association, Defendant. No. .....

Petition for Removal Together With Bond for Removal.

TO: THE HONORABLE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA:

Defendant herein, Retail Clerks Union, Local 770 (hereinafter sometimes referred to as the "Union"), as and for its verified Petition for Removal, respectfully shows to this Honorable Court that:

1. On the 19th day of February, 1969, an action was filed in the Superior Court of the State of California in and for the County of Los Angeles, entitled as in the annexed copy of Complaint for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction and for Specific Performance of Agreement to Arbitrate (hereinafter sometimes referred to as the "Complaint," marked Exhibit "A" and made a part hereof by reference), by service upon defendant of said Complaint. On the same day, plaintiff also filed an Order to Show Cause and Temporary Restraining Order.

2. Defendant herein, Retail Clerks Union, Local 770, affiliated with Retail Clerks International Association, AFL-CIO, is a labor organization as defined in the Labor-Management Relations Act of 1947, 61 Stat. 161, 29 U.S.C., Section 142, and is the defendant

in the aforesaid civil action in the state court. At all times herein relevant, the Union was an unincorporated association in which employees participate and which has existed for the purpose of dealing with employers concerning grievances and terms and conditions of employment and has represented employees in an industry affecting commerce within the meaning of Title 29, U.S.C., §185(a). The plaintiff herein, The Boys Markets, Inc. (hereinafter sometimes referred to as the "Employer") has in the past and does now purchase or receive goods and materials from outside the State of California in substantial dollar amounts, sell products to customers outside the State of California in substantial dollar amounts, and engage as an employer in an industry affecting commerce. At all times relevant herein, there existed and does now exist a collective bargaining agreement between the Union and the Employer.

3. Said action is a civil action of which this Court has original jurisdiction under Title 29, U.S.C., §185-(a), (Section 301 of the Labor-Management Relations Act) and is one which defendant is entitled to remove to this Court pursuant to Title 28, U.S.C., §1441, and Title 29, U.S.C., §184(a), in that said action involves plaintiff engaged in interstate commerce within the meaning of the National Labor Relations Act, as Amended, is based upon a collective bargaining agreement between plaintiff and defendant and the Complaint alleges a violation of the collective bargaining agreement by defendant.

4. The above representations are sufficient to support defendant's Petition for Removal since the Complaint filed in the State Court presents a claim arising

under the "laws of the United States" within the meaning of the removal statute, 28 U.S.C., §1441(b) and since the suit is within the "original jurisdiction" of the District Court within the meaning of 28 U.S.C., §1441(a) and (b). The United States District Court has original jurisdiction of a suit grounded in a breach of contract between an employer and a labor organization (29 U.S.C., §185(a)). All the jurisdictional elements under 29 U.S.C., §185(a) are present if the suit is between an employer engaged in an industry affecting interstate commerce, and a union, alleging a breach of a collective bargaining agreement. See *Food Fair Stores, Inc. v. Retail Clerks District Council No. 11,* 229 F.Supp. 123 (D.C. E.Pa. 1964). The State Court action for injunction for the alleged violation of the no-strike clause in the collective bargaining contract is removable to the Federal District notwithstanding the relief that may be granted in view of the Norris-LaGuardia Act. *Avco Corp. v. Aero Lodge 735, IAM,* 390 U.S. 557 (1968), 67 LRRM 2881.

Whether a suit is for violation of a labor contract within 29 U.S.C., §185(a) is determined with reference to the plaintiff's claim. *Minkoff v. Budget Dress Corp.,* 180 F.Supp. 818 (S.D.N.Y. 1960). But it is permissible to look to the removal petition to determine whether certain of the jurisdictional requirements are met. *Old Dutch Farms, Inc. v. Milk Drivers and Dairy Employees Union, Local 584,* 222 F.Supp. 125 (E.D.N.Y. 1963); *Minkoff v. Scranton Frocks, Inc.,* 172 F.Supp. 870 (S.D.N.Y. 1959).

5. Exhibit "A" which has been annexed and which consists of the copy of Complaint filed in the Los Angeles Superior Court is the initial pleading setting forth the basis of plaintiff's suit. The defendant first received a copy of said initial pleading on February 19, 1969. A copy of the Order to Show Cause and Temporary Restraining Order is attached hereto as Exhibit "B" and made a part hereof by reference. A copy of the Points and Authorities, a copy of the Declaration of Vern Heaps, a copy of the collective bargaining agreement marked Exhibit A and a copy of a telegram marked Exhibit B of Employer in support of the aforesaid Complaint are attached hereto as Exhibits "C," "D," "E" and "F," respectively, and made a part hereof by this reference. The aforesaid documents constitute all of the process, pleadings and orders served upon defendant in said action.

6. This removal petition has been timely filed within twenty days after the receipt by the defendant of a copy of the initial pleading as required by 28 U.S.C., §1446(b).

7. Defendant files herewith a bond with good and sufficient surety in the penal sum of Five Hundred Dollars ($500.00) as provided by Title 28, U.S.C., §1446(d), conditioned that defendant will pay the costs and disbursements incurred by reason of this removal proceeding should it be determined that the action was not removable or was improperly removed.

WHEREFORE, defendant prays that the above action now pending against it in the Superior Court of the State of California for the County of Los Angeles, No. 948 323, hereby be removed from said State Court to this Court.

Dated: February 20, 1969.

* * *

Attorneys for Defendant

(Verification Omitted in Printing)

(Bond on Removal Omitted in Printing)

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

No. 69-337-CC

Notice of Motion and Motion to Quash Superior Court Temporary Restraining Order.

TO: PLAINTIFF, THE BOYS MARKETS, INC., A CALIFORNIA CORPORATION, AND TO JOSEPH M. McLAUGHLIN, ITS ATTORNEY:

PLEASE TAKE NOTICE that on the 10th day of March, 1969, at 10:00 A.M., or as soon thereafter as counsel can be heard, defendant will move the above-entitled Court, at Courtroom No. 2, United States Courthouse, 312 North Spring Street, Los Angeles, California, for an order quashing that Temporary Restraining Order entered in the Superior Court of the State of California for the County of Los Angeles on February 19, 1969 in Case No. 948 323, based on the entire record in this case and the Points and Authorities filed herewith.

Dated: February 24, 1969.

* * *

Attorneys for Defendant

(Affidavit of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

No. 69-337-CC

Memorandum of Points and Authorities in Support of Motion to Quash Superior Court Temporary Restraining Order and in Support of Order Shortening Time.

POINT I

The United States District Court has original jurisdiction of this action since the Complaint is grounded upon an alleged breach of contract between an employer engaged in interstate commerce and a labor organization.

§301 of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C., §185;

Avco Corp. v. Aero Lodge 735, IAM, 390 U.S. 557 (1968), 67 LRRM 2881.

POINT II

A federal court is barred from issuing an injunction in a labor dispute and must dissolve any state injunction issued by a state court prior to the removal of such case.

§4, Norris-LaGuardia Act, 29 U.S.C., §104;

Sinclair Refining Co. v. Atkinson, 370 U.S. 212, 82 S.Ct. 1328, 50 LRRM 2420 (1962);

Avco Corp. v. Aero Lodge 735, IAM, 376 F.2d 337, (6th Cir. 1967), 65 LRRM 2193 (affirmed without reaching this point in 390 U.S. 557).

POINT III

The court may, in its discretion, for good cause prescribe a shorter time for service of notice and hearing.

U. S. District Court, Central District of California, Local Rule 3(c).

Dated: February 24, 1969.

Respectfully submitted,

* * *

Attorneys for Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

No. 69-337-CC

Motion for Order Compelling Arbitration; for Order Requiring Specific Performance of Agreement to Arbitrate; and Application for Preliminary Injunction.

Plaintiff herein, The Boys Markets, Inc., moves the Court for an order compelling defendant, Retail Clerks Union Local 770, to arbitrate the existing controversy, dispute and disagreement arising out of and involving the interpretation and application of their collective bargaining agreement, as set forth with particularity in plaintiff's Complaint on file herein, in accordance with the grievance and arbitration procedures as contained in Article XIV of the collective bargaining agreement between plaintiff and defendant.

Plaintiff further moves the Court for an order commanding and requiring defendant to specifically perform in connection with the said dispute each and every term and provision contained in Article XIV of the said collective bargaining agreement between plaintiff and defendant.

Plaintiff further moves the Court and makes application thereto for a preliminary injunction restraining and enjoining defendant pendente lite from doing or performing, or attempting to do or perform, any or all of the acts and things which defendant was restrained

and enjoined from doing or performing, or attempting to do or perform, by the Temporary Restraining Order heretofore issued by the Superior Court of the State of California.

Said motions, each and all, will be made upon the grounds that plaintiff and defendant are engaged in a controversy, dispute or disagreement arising out of and involving the intepretation or application of the terms and provisions of their said contract as relate to the performance of certain work within plaintiff's store; that the said contract in existence between plaintiff and defendant requires that controversies, disputes or disagreements of the kind or character now existing between the parties be submitted to an impartial arbitrator for binding determination; that defendant, under and pursuant to the terms and provisions of said contract, promised, covenanted and agreed that the Union and its members, employees of plaintiff, would not engage in any strike, work stoppage or other concerted economic activity against plaintiff upon any controversy, dispute or disagreement which was required by said contract to be submitted to arbitration; and that, in substantial and material breach and violation of the terms and provisions of said collective bargaining agreement, defendant engaged in a strike against plaintiff and induced, encouraged and persuaded plaintiff's employees to cease performing their work for plaintiff in furtherance of said strike.

Said motion will be based upon this written motion and notice of hearing thereon, plaintiff's verified

Complaint, declaration in support thereof, memorandum of points and authorities filed in the State Court, supplemental memorandum of points and authorities filed herewith, and the papers, files and records in this proceeding. Said motion will be further based upon the jurisdiction of this Court under and pursuant to the provisions of Title 29, U.S.C., §185, and Title 28, U.S.C., §1441.

DATED: February 26, 1969.

* * *

Attorneys for Plaintiff.

NOTICE OF HEARING ON MOTIONS

TO DEFENDANT, RETAIL CLERKS UNION LOCAL 770, AND TO ARNOLD, SMITH & SCHWARTZ, ITS ATTORNEYS:

PLEASE TAKE NOTICE that on the 10th day of March, 1969, at the hour of 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, plaintiff will bring the foregoing motions on for hearing before the above-entitled Court, the Honorable Charles H. Carr, District Judge Presiding, at Courtroom No. 2, United States Courthouse, 312 N. Spring Street, Los Angeles, California.

DATED: February 26, 1969.

* * *

Attorneys for Plaintiff.

(Affidavit of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

No. 69-337-CC

Supplemental Memorandum of Points and Authorities in Support of Motions to Compel Arbitration; for Specific Performance; and for Preliminary Injunction.

I

The Federal Courts Have Jurisdiction To Compel A Labor Organization To Arbitrate Disputes Arising Under Labor Agreements.

The United States Supreme Court has held that Section 301 of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. §185), gives Federal District Courts jurisdiction to compel compliance with provisions of collective bargaining contracts between employers and unions which require arbitration of disputes arising out of such agreements and also furnishes a body of federal substantive law for the enforcement of such contracts. The Norris-LaGuardia Act (29 U.S.C. §101, et seq.) does not prevent the granting of such relief.

Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448, 40 LRRM 2113.

General Electric Co. v. Local 205, United Electrical, Radio and Machine Workers of America, 353 U.S. 547, 40 LRRM 2119.

"The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluc-

tant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or agreed to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, 46 LRRM 2416.

"The collective agreement calls for the submission of grievances in the categories which it described irrespective of whether a court may deem them to be meritorious. In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve. See Lewis v. Benedict Coal Corp., 361 U.S. 459, 468, 45 LRRM 2719. The function of the court is very limited when the parties have agreed to submit all questions of

contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.

"The courts therefore have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious. The processing of even frivolous claims may have therapeutic values which those who are not a part of the plant environment may be quite unaware."

United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564, 567-568, 46 LRRM 2414.

II

Federal Courts Have Power To Require Specific Performance Of Contracts Between Employers And Unions.

The provisions of Section 301 of the Labor-Management Relations Act of 1947 establish substantive law to apply in actions under this Section. The Courts are required thereunder to fashion the federal law from the policies of our national labor laws and to fash-

ion remedies that will effectuate that policy. The range of judicial inventiveness must be determined by the nature of the problem.

Textile Workers Etc. v. Lincoln Mills of Alabama, supra.

Under Section 301, then, the Courts have the power to require specific performance by a defaulting party of the terms and provisions of the collective bargaining agreement.

Retail Clerks Union Local 1222 v. Alfred M. Lewis, Inc., (CA-9 1964), 327 Fed. 2d 442;

Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union Local 705 v. Novak, (DC-ND Ill. 1960), 47 LRRM 2444.

III

The Norris-LaGuardia Act Is To Be Construed As One Of A Number Of Interlacing Statutes Establishing A National Labor Policy And Cannot Be Read In Isolation.

The Norris-LaGuardia Act, 29 U.S.C. §101-115 was enacted in 1932. The Act states that no Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, with certain stated exceptions not pertinent here. The statute was a Congressional reaction to the use and, sometimes, abuse of the injunctive process in labor relations during the first three decades or so of this century. At the time, it was felt that the labor movement required governmental assistance in order to grow and increase its strength so as to permit meaningful collective bargaining between employers and unions with a parity of bargaining power.

This statute was followed in 1935 by the enactment of the National Labor Relations Act, popularly referred to as the Wagner Act. The Norris-LaGuardia Act declared the public policy of the United States that employees have full freedom of association and designation of representatives of their own choosing. (29 U.S.C. §102). This policy was reaffirmed by the National Labor Relations Act which outlawed certain types of employer conduct and which was designed to enhance the ability of labor unions to obtain employer recognition and bargaining status.

In 1941, the Supreme Court considered the impact of the Norris-LaGuardia Act upon certain anti-trust laws of the United States. The question presented was whether the use of conventional, peaceful activities by a union in controversy with another union over certain jobs was a violation of the Sherman Act. The Government had indicted four officers of the Carpenters Union alleging a criminal combination and conspiracy in violation of the anti-trust laws. In determining this issue, Mr. Justice Frankfurter, writing for the Court, stated, "* * * whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and § 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct." The Court posed the question as follows:

> "Were then the acts charged against the defendants prohibited or permitted by these three interlacing statutes?"

United States v. Hutcheson, 312 U.S. 231, 232; 61 S. Ct. 466.

The Court characterized the statutes mentioned as practically and historically a series of enactments touching "* * * one of the most sensitive national problems." The Court declared:

> "Such legislation must not be read in a spirit of mutilating narrowness. On matters far less vital and far less interrelated we have had occasion to point out the importance of giving 'hospitable scope' to Congressional purpose even when meticulous words are lacking. Keifer & Keifer v. Reconstruction Finance Corporation, 306 U.S. 381, 391, 59 S.Ct. 516, 519, 83 L.Ed. 784, and authorities there cited. The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' Johnson v. United States, 1 Cir., 163 F. 30, 32, 18 L.R.A., N.S., 1194."

United States v. Hutcheson, 312 U.S. 235, 61 S. Ct. 467, 468.

Applying the foregoing principles, the Court held that the acts complained of could not be considered as violative of the anti-trust laws. At the time *Hutcheson* was decided, bearing in mind the then existing labor legislation, there could be no doubt but that Norris-LaGuardia prohibited Federal Courts from issuing injunctions in all "labor disputes". However, in 1947, the Congress enacted the Labor Management Relations Act of 1947 (29 U.S.C. §141). This statute reflected a significant change in legislative emphasis. Whereas Norris-LaGuardia and the Wagner Act had been designed to promote union strength, the 1947 Act was primarily for the purpose of limiting union conduct and restricting a force which, many felt, had grown too strong since the early 1930s. The statute contained many such specific restrictions.

Section 301 of that statute (29 U.S.C. §185) provided for the first time that, among other things, suits for violation of contracts between employers and unions could be brought in the Federal Courts. Section 301(a) reads:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commence as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Section 301 was subjected to the scrutiny of the Supreme Court in *Ass'n Of Westinghouse Salaried Employees v. Westinghouse Electric Corp.* (1955), 348

U.S. 437, 75 S. Ct. 489. This was an action by a labor organization for construction of a collective bargaining agreement and for the enforcement of certain individual employees' alleged rights to unpaid wages under the agreement. The Supreme Court, through Mr. Justice Frankfurter, held that the action was not within the jurisdiction of the Federal Courts, as conferred by Section 301. The Court rejected the argument that Section 301 gave rise to federal substantive rights, stating, "To turn Section 301 into an agency for working out a viable theory of the nature of a collective bargaining agreement smacks of unreality." (348 U.S. 456, 75 S.Ct. 498). After *Westinghouse* in 1955, as after *Hutcheson* in 1941, in the state of the law as then interpreted by this Court, there was no doubt but that Norris-LaGuardia prohibited Federal Court injunctions in "labor disputes", including ones such as the case at bar.

However, a dramatic change of direction was to take place and the Court's construction of Section 301 in *Westinghouse* was not to have much longevity. Two years later, in 1957, *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 71 S. Ct. 912, was decided. This decision is popularly referred to as *Lincoln Mills*. It was an action brought by the plaintiff union in the District Court to compel enforcement of an arbitration agreement contained in a collective bargaining agreement. The agreement provided that there would be no strikes or work stoppages, and that grievances would be handled pursuant to a specified procedure, the last step being arbitration. The union sued because the employer had refused to arbitrate. The Court, in an opinion by Mr. Justice Douglas, again considered the proper construction of Section 301 and

held that it "* * * authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements and includes within that federal law specific performance of promises to arbitrate grievances * * *." (353 U.S. 451, 77 S.Ct. 915).

Westinghouse was dismissed in a footnote as "* * * quite a different case." (353 U.S. 456, 77 S. Ct. 917). The Court said:

> "Thus collective bargaining contracts were made 'equally binding and enforceable on both parties.' Id., p. 15. As stated in the House Report, supra, p. 6, the new provision 'makes labor organizations equally responsible with employers for contract violations and provides for suit by either against the other in the United States district courts.' To repeat, the Senate Report, supra, p. 17, summed up the philosophy of § 301 as follows: 'Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.'
>
> "*Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike.* Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." (Emphasis ours.) (353 U.S. 454, 77 S.Ct. 916-917).

The Court added:

> "The question then is, what is the substantive law to be applied in suits under § 301(a)? We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." (353 U.S. 456, 77 S.Ct. 918).

The Court then turned to the question whether jurisdiction to compel arbitration was withdrawn by Norris-LaGuardia and reviewed the history of that legislation, holding that although a literal reading of Norris-LaGuardia might prohibit enforcement of agreements to arbitrate, "* * * we see no justification in policy for restricting Section 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act." (353 U.S. 458, 77 S.Ct. 918). Although Mr. Justice Frankfurter dissented vigorously, citing *Westinghouse,* Section 301 thus became a charter of great scope within which the federal judiciary was to erect a federal law governing collective bargaining agreements.

Predictably, *Lincoln Mills* gave rise to extensive litigation. One of the cases spawned by *Lincoln Mills* was *Sinclair Refining Company v. Samuel M. Atkinson,* 370 U.S. 195, 82 S.Ct. 1328, decided in 1962. It involved an action by an employer against a union brought in the Federal District Court to enjoin alleged violation of a no-strike agreement and for other relief. The defendant union argued that Norris-LaGuardia barred the issuance of an injunction against work stoppages, even if in breach of a labor agreement and even if, as alleged, there was a pattern of repeated and deliberate vio-

lations of the contract by the defendant union. Five Justices, in an opinion by Mr. Justice Black, held that the action did involve a "labor dispute" within the meaning of Norris-LaGuardia, held that Norris-LaGuardia prohibited the issuance of an injunction in such a situation by a Federal Court, and held that Section 301 was not a repeal of Norris-LaGuardia. Justices Brennan, Douglas and Harlan dissented, saying to hold that Section 301 did not repeal Norris-LaGuardia was only the beginning of proper judicial inquiry. The dissenters pointed out:

> "The Court has long acted upon the premise that the Norris-LaGuardia Act does not stand in isolation. It is one of several statutes which, taken together, shape the national labor policy. Accordingly, the Court has recognized that Norris-LaGuardia does not invariably bar injunctive relief when necessary to achieve an important objective of some other statute in the pattern of labor laws. See Brotherhood of Railroad Trainmen v. Chicago River R. Co., 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed. 2d 622; Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232, 70 S. Ct. 14, 94 L.Ed. 22; Virginian R. Co. v. System Federation, 300 U.S. 515, 562-563, 57 S.Ct. 592, 81 L.Ed. 789. In Chicago River we insisted that there 'must be an accommodation of [the Norris-LaGuardia Act] and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved.'
>
> "These decisions refusing inflexible application of Norris-LaGuardia point to the necessity of a careful inquiry whether the surface conflict between § 301 and § 4 is irreconcilable in the setting

before us: a strike over a grievance which both parties have agreed to settle by binding arbitration. I think that there is nothing in either the language of § 301 or its history to prevent § 4's here being accommodated with it, just as § 4 was accommodated with the Railway Labor Act.

"It cannot be denied that the availability of the injunctive remedy in this setting is far more necessary to the accomplishment of the purposes of § 301 than it would be detrimental to those of Norris-LaGuardia. Chicago River makes this plain. We there held that the federal courts, notwithstanding Norris-LaGuardia, may enjoin strikes over disputes as to the interpretation of an existing collective agreement, since such strikes flout the duty imposed on the union by the Railway Labor Act to settle such 'minor disputes' by submission to the National Railroad Adjustment Board rather than by concerted economic pressures. We so held, even though the Railway Labor Act contains no express prohibition of strikes over 'minor disputes,' because we found it essential to the meaningful enforcement of that Act—and because the existence of mandatory arbitration eliminated one of the problems to which Norris-LaGuardia was chiefly addressed, namely, that 'the injunction strips labor of its primary weapon without substituting any reasonable alternative.'

"That reasoning is applicable with equal force to an injunction under § 301 to enforce a union's contractual duty, also binding on the employer, to submit certain disputes to terminal arbitration and to refrain from striking over them. The federal

law embodied in § 301 stresses the effective enforcement of such arbitration agreements. When one of them is about to be sabotaged by a strike, § 301 has as strong a claim upon an accommodating interpretation of § 4 as does the compulsory arbitration law of the Railway Labor Act. It is equally true in both cases that '[an injunction] alone can effectively guard the plaintiff's right,' International Ass'n of Machinists v. Street, 367 U.S. 740, 773, 81 S. Ct. 1784, 1802, 6 L.Ed.2d 1141. It is equally true in both cases that the employer's specifically enforceable obligation to arbitrate provides a 'reasonable alternative' to the strike weapon. It is equally true in both cases that a major contributing cause for the enactment of Norris-LaGuardia—the at-largeness of federal judges in enjoining activities thought to seek 'unlawful ends' or to constitute 'unlawful means'—is not involved. Indeed, there is in this case a factor weighing in favor of the issuance of an injunction which was not present in Chicago River: the express contractual commitment of the union to refrain from striking, viewed in light of the overriding purpose of § 301 to assist the enforcement of collective agreements.

"In any event, I should have thought that the question was settled by Textile Workers v. Lincoln Mills, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972. In that case, the Court held that the procedural requirements of Norris-LaGuardia's § 7, although in terms fully applicable, would not apply so as to frustrate a federal court's effective enforcement under § 301 of an employer's obligation to arbitrate.

It is strange, I think, that § 7 of the Norris-LaGuardia Act need not be read, in the face of § 301, to impose inapt procedural restrictions upon the specific enforcement of an employer's contractual duty to arbitrate; but that § 4 must be read, despite § 301, to preclude absolutely the issuance of an injunction against a strike which ignores a union's identical duty." (370 U.S. 217-220, 82 S.Ct. 1340-1342).

Among the questions given birth by *Lincoln Mills* and requiring decision was the matter of removal of 301 actions from State to Federal Courts, the Court having held that such actions remain cognizable in both State and Federal Courts in *Charles Dowd Box Co. v. Courtney,* 368 U.S. 502, 82 S.Ct. 519, and that the State Courts must apply federal law in such actions.

Local 174 Teamsters v. Lucas Flour, 369 U.S. 95, 82 S.Ct. 571.

After differing decisions in the Circuits, the Court, in 1968, decided *Avco Corp. v. Aero Lodge No. 735, I.A.M.,* 390 U.S. 557, 88 S.Ct. 1235. Because of this decision and the now existing state of the law respecting Section 301, no longer can it be said that Norris-LaGuardia prohibits injunctive relief in the case at bar. The petitioner brought suit in a State Court to enjoin the respondent union from striking at the petitioner's plant. The heart of the complaint was a no-strike clause in the labor agreement by which grievances were to be settled in arbitration. The State Court issued an injunction, and the respondent union then moved in the Federal District Court for removal of the case. A motion to remand to the State Court was

made and denied. The Supreme Court held that the case was removable to the Federal Court under 28 U.S.C. § 1441. Another question in the case was whether, after removal, the Federal Court was barred from continuing the state injunction in effect or from issuing an injunction itself. As Justices Stewart, Harlan and Brennan point out in their concurring opinion this question is now expressly left undecided and open.

> "As the Court says, it is not clear whether or not the District Judge dissolved the injunction 'because it felt that action was required by Sinclair Refining Co. v. Atkinson, 370 U.S. 195,' ante, at ...., n. 4. Accordingly, the Court expressly reserves decision on the effect of Sinclair in the circumstances presented by this case. The Court will, no doubt, have an opportunity to reconsider the scope and continuing validity of Sinclair upon an appropriate future occasion."

IV

A Proper Accommodation Of Section 301 To Norris-La-Guardia Requires The Conclusion That Federal Courts Possess Injunctive Power In Section 301 Actions.

As the decisions reviewed in the preceding Section clearly show, the Supreme Court has for many years followed a policy of accommodating the various labor enactments to each other so as to fashion a meaningful and coherent national labor policy. This policy, which had its genesis in the *Hutcheson* decision, has resulted in what might be termed a judicially fashioned federal common law of labor relations which must be applied by both the State and Federal Courts in actions in-

volving labor agreements. The *Sinclair* case, however, is an anomaly which now under *Avco* stands alone and discredited; particularly in cases wherein labor organizations have violated no-strike pledges of their contracts. It has been said by many commentators that *the agreement not to strike on the part of a labor organization is the only real consideration received by an employer from the union for a collective bargaining agreement.* Since the Supreme Court in *Avco* has held that injunction actions for breach of labor contracts may be removed from State Courts to the Federal Courts under their 301 jurisdiction, it would, indeed, be incongruous were the Federal Courts to be powerless to grant an employer the only effective remedy in such situations.

Just as the Supreme Court's decision in *Lincoln Mills* forever interred its earlier decision in *Westinghouse, Avco* has buried *Sinclair.* In *Avco,* the State Court had granted an employer a temporary injunction restraining economic activity by the union in breach of its contract to arbitrate. The District Court dissolved the State Court injunction on removal, and this order was affirmed by the Court of Appeals. The Supreme Court refused to decide the issue raised (whether the District Court had the power to grant the injunction sought by the employer), for the reason that the court could not determine from the record "Whether it (District Court) did so because it felt that action was required by *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, or because of its equity powers or both * * *". (*Avco v. Aero Lodge,* 88 S. Ct. 1235, Fn. 4). The Supreme Court expressly reserved decision upon the issue, and Mr. Justice Stewart, with Mr.

Justice Harlan and Mr. Justice Brennan concurring, specifically noted that "The Court will no doubt have an opportunity to reconsider the scope and continuing validity of *Sinclair* upon an appropriate future case." The future case is, indeed, before this Court in this action.

The conclusion that *Sinclair* was "wrongly decided" and a mistaken departure from the harmonious scheme developed by the Court in this area was reached by a number of legal writers even before *Avco*. (See, for example, Aaron, *Strikes In Breach Of Collective Agreements: Some Unanswered Questions*, 63 Col. L.R. 1027, 1034, 1051). Professor Harry H. Wellington and Editor Lee A. Albert, in 72 Yale L.J. 1547 (*Statutory Interpretation And The Political Process: A Comment On Sinclair V. Atkinson*), state that "An examination of the central purposes of Section 4 of Norris-LaGuardia and Section 301 of the Labor Management Relations Act supports the conclusion of the dissenting Justices of the Supreme Court. Preclusion of injunctive relief for a strike over an arbitrable grievance would work greater damage to the core policies of Section 301, *especially in light of the gloss that statute has acquired since 1958*, than allowance of such relief would work on the policies of Norris-LaGuardia." (p. 1552; emphasis added.)

In their discussion of the question, these writers also state that:

> "While the purpose underlying the Norris-LaGuardia Act suggests that that statute should not preclude a district court from enjoining a breach of contract strike over an arbitrable grievance, the purpose embodied in section 301 of the Labor

Management Relations Act strongly suggests the desirability of the strike injunction. This judgment about section 301's purpose is particularly compelling given the gloss put upon the statute by the Supreme Court.

"*Lincoln Mills* is the key decision. In that case the Court in 1958 held that section 301 empowered a federal district court to order specific performance of a promise to arbitrate unresolved grievances. *Lincoln Mills* went a long way towards making arbitration the central institution in the administration of collective bargaining contracts. Subsequent decisions have elaborated the consequences of this recognition. Once the parties include an arbitration clause in their collective bargaining contract they are bound, as a matter of federal law, to submit the vast bulk of disputes that they are unable to resolve by negotiation to an arbitrator. Neither the employer nor the union is free to disregard this obligation." (72 Yale L.J. 1547, 1557).

Thus, the decision of the Supreme Court in *Lincoln Mills* furnishes the legal basis for the re-examination of the validity of *Sinclair* which, the concurring Justices in *Avco* make clear, must now be undertaken in the light of *Avco*. In its decision in *Lincoln Mills,* the Supreme Court expressly related an agreement to arbitrate to an agreement not to strike, one being the consideration for the other. Thus, the Court held that Section 301 established "* * * federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." In this

connection, the Court stated that upon review of the Congressional history of Section 301, "* * * it became abundantly clear that the purpose of the section was to provide the necessary legal remedies." The Court found the basis for this conclusion in an exchange between Congressman Barden and Congressman Hartley, the sponsor of the bill, during the course of the debates thereon. Congressman Barden asked if his understanding was correct that the proposed legislation (Section 301) "* * * contemplates not only the ordinary lawsuits for damage but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; * * *." Congressman Hartley responded that Congressman Barden was "absolutely correct". (353 U.S. 454, 455-456, 77 S.Ct. 916-917).

Since *Avco,* then, there can be no question but that the *Sinclair* decision has lost its validity and is no longer controlling law. The Supreme Court reviewed *Avco* because of conflict between the Courts of Appeal for the Sixth Circuit's decision in *Avco* and the decision of the Third Circuit in *American Dredging Co. v. Local 25,* 338 F. 2d 387. In *American Dredging,* the Court of Appeals for the Third Circuit held that the District Court below erred in failing to remand an employer's injunction suit (which had been removed from the State Court in which it had been filed), on the grounds that the denial of remand "* * * led to the 'absurd consequence' of leaving the District Court with a case on its judicial hands without power to make a final decree on its merits * * *".

Now that the Supreme Court has rejected the approach of the Third Circuit in *American Dredging* and

has determined that injunction actions for breach of no-strike clauses in labor contracts by unions are properly removable to the Federal Courts, unless Section 4 of Norris-LaGuardia is accommodated with Section 301 of the Taft-Hartley Act, the same "absurd consequences" necessarily follow. Labor agreements containing no-strike covenants are otherwise as a practical matter utterly unenforceable and will, in fact, become totally meaningless if the Federal Courts are powerless to restrain labor organizations from deliberate violation of these promises. If this be so, the consideration received by employers as the *quid pro quo* for their agreements to arbitrate disputes are only a vain and idle fancy.

The harmonizing approach of Mr. Justice Frankfurter in the *Hutcheson* case must be adopted by the Court in order that plaintiff be spared the total injustice which is inevitable if *Sinclair* be blindly followed in the light of the *Avco* decision. The range of judicial inventiveness demanded by *Lincoln Mills* must be employed to interlace Section 4 of the Norris-LaGuardia Act and Section 301 of the Labor-Management Relations Act in such a manner as to permit effective enforcement of arbitration and no-strike agreements. The Congressional purpose in the enactment of the Norris-LaGuardia Act cannot be said to have encompassed the denial to the Federal Courts of their traditional equitable powers to compel specific performance of lawful collective bargaining agreements, and it is now clear that the substantive federal labor policy inherent in Section 301 can-

not be permitted to be sabotaged by mere adoption of a plain and literal interpretation of the Norris-LaGuardia Act which was enacted in an entirely different climate over thirty years ago.

Plaintiff, therefore, submits that defendant's motion to quash the Temporary Restraining Order should be summarily denied, and that the Court should issue its orders:

1. Compelling defendant to arbitrate its dispute with plaintiff, as required by the contract;

2. Requiring defendant to specifically perform the grievance and arbitration provisions of the contract; and

3. Enjoining defendant pendente lite from further breach of the no-strike provisions of the contract in the same terms and with like force and effect as defendant was restrained by the State Court.

Respectfully submitted,

* * *

Attorneys for Plaintiff.

(Affidavit of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 69-337-CC

The Boys Markets, Inc., a California corporation, Plaintiff, vs. Retail Clerks Union, Local 770, an unincorporated association, Defendant.

Findings of Fact and Conclusions of Law.

Filed March 13, 1969.

This cause came on to be heard by the Court, the Honorable Charles H. Carr United States District Judge Presiding, on the 10th day of March, 1969, on the motion of plaintiff for an order compelling arbitration; for specific performance of contract; and for injunction pending arbitration, and on the motion of defendant to quash the Temporary Restraining Order heretofore issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323, removed to this Court, and the Court having considered the verified complaint, declaration and memorandum of points and authorities filed by plaintiff in the State Court, the supplemental memorandum of points and authorities and motion filed by plaintiff herein, and the motion of defendant to quash the said Temporary Restraining Order and the memorandum of points and authorities of defendant, and having heard the argument of counsel, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. Plaintiff, The Boys Markets, Inc., is a corporation duly organized and existing under the laws of the State of California and owns and operates a chain of

retail food supermarkets, one of which said supermarkets is located at 7230 Atlantic Boulevard in the City of Cudahy within this District. Plaintiff employs retail clerks in the said supermarket located at 7230 Atlantic Boulevard, Cudahy, California, who are represented for collective bargaining purposes by defendant.

2. Defendant, Retail Clerks Union Local 770, is an unincorporated assocation functioning as a labor organization, affiliated with the Retail Clerks International Association, AFL-CIO, being composed of several thousand members who are employed as retail clerks in supermarkets, drug stores, discount stores and other retail establishments who are represented for collective bargaining purposes by said labor organization with its principal offices located within this District.

3. Plaintiff and defendant executed and entered into a contract, in writing, known as "Retail Food, Bakery, Candy, and General Merchandise Agreement, April 1, 1964—March 31, 1969", which said contract provided for and established the wages, hours, benefits and conditions of employment for the employees of plaintiff employed as retail clerks in plaintiff's supermarket located at 7230 Atlantic Boulevard, Cudahy, California.

4. Article XIV of said contract, entitled "Adjustment And Arbitration" provides as follows:

"ARTICLE XIV

"ADJUSTMENT AND ARBITRATION

"A. CONTROVERSY, DISPUTE OR DISAGREEMENT. Any and all matters of controversy, dispute or disagreement of any kind or character existing between the parties and arising out of or in any way involving the interpretation or

application of the terms of this Agreement, except as may be otherwise provided in Paragraph D of this Article, shall be settled and resolved by the procedures and in the manner hereinafter set forth.

"B. ADJUSTMENT PROCEDURE.

"1. *Store Level.* The Union through its representatives shall attempt to settle or resolve any such matter with the appropriate store supervisor or person designated by the Employer in the manner indicated in Article X of this Agreement.

"2. *Meeting of Representatives.* Upon receipt of a written notice from either party, the representatives of the Employer and the representatives of the Union shall meet within a calendar week and attempt to settle or resolve the matter.

"3. *Food Employers Council, Inc.* The union hereby recognizes the Food Employers Council, Inc. as the authorized representative of its members in matters pertaining to the negotiation and administration of this Agreement. In the event of a dispute, it shall be the duty of the Employer to notify the Food Employers Council, Inc. of the existing dispute if said Employer desires said Food Employers Council, Inc. to represent it in the dispute. Should a grievance or dispute be settled between the Union and any Employer signatory to this Agreement without the participation of the Food Employers Council, Inc. and if in such settlement, an interpretation of any language or phrase of this Agreement is involved in order that such settlement be reached, the Union

shall, within ten (10) days of such settlement notify Food Employers Council, Inc., in writing of the dispute, the language or the phrase interpreted, the settlement reached, and the date of such settlement. Should the Union fail to notify the Food Employers Council, Inc., as set forth above, the fact of settlement and the interpretation of the language or phrase of the Agreement involved in the settlement shall not be used in evidence for any purpose whatsoever. No such settlement or interpretation shall be binding upon the Food Employers Council, Inc. or its members unless the Council or its members thereof participated in arriving at such settlement or interpretation.

"C. ARBITRATION.

"1. Any matter not satisfactorily settled or resolved in Paragraph B hereinabove shall be submitted to arbitration for final determination upon written demand of either party. The written demand for arbitration may be made at any time after the expiration of fifteen (15) days from the date of the notice, submitting the matter under Paragraph B, subsection 2, hereinabove, to the meeting of representatives.

"2. The representatives of the Union and the representatives of the Employer shall meet for the purpose of selecting an impartial arbitrator within the ten (10) day period following the demand for arbitration. If no agreement upon an arbitrator is reached during this period, either party may then request a list of fifteen (15) persons qualified to act as arbitrators under this Agree-

ment, from the Federal Mediation and Conciliation Service and upon receipt of this list the parties shall immediately thereafter select the arbitrator by alternately striking names from the list until the last name remains. The parties shall draw lots to determine who shall make the first deletion from the list.

"3. Should either party desire, a board of arbitration shall be convened in lieu of a single arbitrator, consisting of an equal number of arbitrators appointed by each party (not to exceed two appointed by each), and the impartial arbitrator who shall be chairman. The board shall hear and determine the matter by majority vote of the members of the board.

"4. The arbitrator or board of arbitration shall be empowered to hear and determine the matter in question and the determination shall be final and binding upon the parties, subject only to their rights under law. The hearings shall be held within thirty (30) days after the selection of the arbitrator, or board, which shall have the power to decide the date or dates upon which the arbitration is to be held if agreement cannot be reached by the parties.

"D. POWERS, LIMITATIONS AND RESERVATIONS.

"1. *Arbitrator.* The arbitrator or board of arbitration shall not have the authority to decide questions involving the jurisdiction of any local, or of the International, or which may in any way affect or change the Union Security clause, nor shall the

arbitrator or board of arbitration have the authority to effect a change in, modify, or amend any of the provisions of this Agreement, or to make decisions on provisions covering wages or working conditions to be incorporated either in a new agreement or any subsequent annual agreement. If a question of the arbitrability of an issue is raised by either party, such question shall be determined in the first instance by the arbitrator or board. Neither party to this Agreement shall refuse to proceed to arbitration upon the grounds that the matter in question is not arbitrable.

"2. *Work Stoppages.* Matter subject to the procedures of this Article shall be settled and resolved in the manner provided herein. During the term of this Agreement, there shall be no cessation or stoppage of work, lock-out, picketing or boycotts, except that this limitation shall not be binding upon either party hereto if the other party refuses to perform any obligation under this Article or refuse or fails to abide by, accept or perform a decision or award of an arbitrator or board.

"3. *Wage Claims.* In the case of a direct wage claim or a claim for contributions to employee benefit plans which does not involve an interpretation of any of the provisions of this Agreement, either party may submit such claim for settlement to either the grievance procedure provided for herein or to any other tribunal or agency which is authorized and empowered to effect such a settlement.

"E. STATUS QUO. During the period of adjustment or arbitration as provided in this Article, the conditions in effect at the time of receipt of written notice, specified in Paragraph C above, shall continue in effect pending final decision.

"F. EXPENSES. The expenses of the arbitrator shall be borne equally by both the Employer and the Union.

"G. TIME LIMITS. The time limits set forth above may be extended by mutual agreement between the parties.

"H. REPORTING DISCREPANCIES. It shall be the responsibility of the employee to report any claimed discrepancy to the Union promptly upon discovery, and it shall then become the responsibility of the Union to notify the Employer promptly of such claimed discrepancy. In any event, all complaints must be filed in writing within thirty (30) days after the matter in dispute or disagreement is first reported to the Union. Complaints not filed within the limits herein specified shall be deemed null and void."

5. Plaintiff and defendant became involved in a controversy, dispute and disagreement concerning the performance of certain work in plaintiff's supermarket located at 7230 Atlantic Boulevard, Cudahy, California, on Tuesday, February 18, 1969. Defendant objected to the method used by plaintiff in relocating certain merchandise within frozen food cases located in said store, and defendant demanded that plaintiff require employees represented by defendant to remove all merchandise from said frozen food cases, return said

merchandise to the main freezer in the backroom of the store and thereafter restock all of said merchandise in the said frozen food cases. Defendant threatened that unless plaintiff agreed to such demands, defendant would cause a strike and work stoppage against plaintiff.

6. Plaintiff refused to agree to the demands made by defendant. Thereafter, on February 18, 1969, defendant and its representatives ordered, instructed and required all of the retail clerks employed by plaintiff in said store to leave their employment to engage in a strike and work stoppage against plaintiff. Plaintiff's employees, acting under and pursuant to defendant's instructions, ceased to perform their work for plaintiff and engaged in a strike and work stoppage against plaintiff. Defendant established a picket line on and about the premises of plaintiff's store, and defendant's pickets carried signs reading,

"LOCAL 770
THIS STORE ON STRIKE
PLEASE RESPECT OUR PICKET LINES"

Said strike, work stoppage and picketing continued until defendant was served with a Temporary Restraining Order issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323.

7. On February 18, 1969, plaintiff caused a telegram to be sent to defendant demanding that the dispute be submitted to arbitration and that defendant cease and desist from the strike and work stoppage. Defendant failed and refused to agree to arbitrate the said dispute or to end its strike, picketing and work stoppage.

8. Unless defendant is enjoined and restrained from continuing to engage in the strike, picketing and work stoppage, it may be reasonably expected that plaintiff will suffer substantial and serious loss of business and customer patronage to plaintiff's substantial and irreparable injury and damage in excess of such damage as plaintiff may have already suffered, and greater injury will be inflicted upon plaintiff by the denial of relief than will be inflicted upon defendant by the granting of such relief.

9. It is impossible for plaintiff to ascertain the exact amount of damage and injury which plaintiff will sustain if defendant and its members are not enjoined from committing such acts, and plaintiff has no adequate remedy at law.

CONCLUSIONS OF LAW

1. Plaintiff and defendant are parties to a valid existing collective bargaining agreement, in writing, effective through March 31, 1969, which by its terms requires that any and all matters of controversy, dispute or disagreement of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of said contract shall be submitted to arbitration for final and binding determination of the merits of such controversy, dispute or disagreement, and which contract further provides that defendant and its members shall not engage in any cessation or stoppage of work or picketing by reason of any matter subject to the arbitration procedures of the contract.

2. During the term of said contract, plaintiff and defendant became engaged in a controversy, dispute or disagreement concerning the stocking of frozen food

cases at plaintiff's store located at 7230 Atlantic Boulevard, Cudahy, California. Said controversy, dispute or disagreement was of a type and character required by the terms of the said contract to be submitted to arbitration for final and binding determination.

3. Defendant, and members of defendant employed by plaintiff, engaged in a strike, picketing and work stoppage commencing on February 18, 1969, in substantial and material breach and violation of the contract between plaintiff and defendant.

4. Plaintiff has no plain, speedy or adequate remedy at law.

5. The Court has jurisdiction over plaintiff's cause and the relief sought thereunder by plaintiff under the provisions of Title 29, United States Code, Section 185.

6. Plaintiff's motion for an order compelling defendant to arbitrate the said controversy, dispute or disagreement must be granted.

7. Plaintiff's motion and application for injunction enjoining and restraining defendant and its members from engaging in a strike, picketing and work stoppage at plaintiff's store located at 7230 Atlantic Boulevard, Cudahy, California, pending submission of the aforesaid controversy, dispute or disagreement to arbitration, must be granted.

8. Defendant's motion to quash the Temporary Restraining Order, issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323, must be denied.

DATED: March 12, 1969.

Charles H. Carr
United States District Judge

* * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 69-337-CC

The Boys Markets, Inc., a California corporation, Plaintiff, vs. Retail Clerks Union, Local 770, an unincorporated association, Defendant.

Order Directing That Arbitration Proceed and Order Granting Injunction Pending Arbitration.

Filed Mar. 13, 1969.

This cause came on to be heard by the Court, the Honorable Charles H. Carr, United States District Judge Presiding, on the 10th day of March, 1969, on the motion of plaintiff for an order compelling arbitration; for specific performance of contract; and for injunction pending arbitration, and on the motion of defendant to quash the Temporary Restraining Order heretofore issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323, said action having been removed to this Court. Plaintiff, appearing by its counsel, Law Offices of Joseph M. McLaughlin, by William B. Irvin, Esq., and defendant appearing by its counsel, Arnold, Smith & Schwartz, by Gerald A. W. Haight, Esq. The Court having considered the verified complaint of plaintiff, declaration, memorandum of points and authorities filed by plaintiff in the State Court, the supplemental memorandum of points and authorities and motion filed by plaintiff herein and the motion of defendant to quash the said Temporary Restraining Order and the memorandum of points and authorities of defendant, and having heard the argument of counsel,

and it appearing to the Court after due deliberation that plaintiff and defendant are parties to a valid and existing collective bargaining agreement in writing; that said contract requires that any and all matters of controversy, dispute and disagreement of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of said contract shall be submitted to final and binding arbitration; that defendant under and pursuant to the terms and provisions of said contract promised, covenanted and agreed that the Union and its members, employees of plaintiff, would not engage in any strike, work stoppage or other concerted activity against plaintiff upon or by reason of any controversy, dispute or disagreement required by said contract to be submitted to arbitration; that plaintiff and defendant are engaged in a controversy, dispute or disagreement arising out of and involving the interpretation or application of the provisions of their said contract relating to the performance of certain work within plaintiff's store, and that said controversy, dispute or disagreement is of the kind or character required by the said contract to be submitted to an impartial arbitrator for binding determination; that defendant, in breach of the terms and provisions of its said contract, engaged in a strike against plaintiff and induced, encouraged and persuaded plaintiff's employees to cease performing their work for plaintiff and to engage in a strike and work stoppage, and that by reason of the acts committed by defendant, plaintiff has suffered irreparable injury and will continue to suffer irreparable injury unless defendant is enjoined and restrained from committing the said acts.

It further appearing to the Court that the Court has jurisdiction of the subject matter of the action and to grant the relief sought by plaintiff under Title 29, United States Code, Section 185, and good cause appearing therefor:

IT IS ORDERED that the controversy, dispute or disagreement between plaintiff and defendant relating to or concerning the performance of work in and upon the frozen food display cases in plaintiff's market located at 7230 Atlantic Boulevard, Cudahy, California, be submitted to arbitration in accordance with the terms and provisions of Article XIV of the contract between plaintiff and defendant, known as "Retail Food, Bakery, Candy, and General Merchandise Agreement, April 1, 1964—March 31, 1969", and that plaintiff and defendant proceed with diligence so that said arbitration shall be completed and the decision and award of the arbitrator rendered within sixty (60) days of the date of this order or within such further time as may be necessarily required under the circumstances.

IT IS FURTHER ORDERED that defendant, its officers, agents, representatives, members, employees, and each of them, and all persons acting in aid or in concert with defendant, be and they hereby are enjoined and restrained, pending the decision and award of the impartial arbitrator, from doing or attempting to do, or threatening to do, and from causing to be done, either directly or indirectly, by any means, method or device

whatsoever, any and all of the following acts in connection with, related to or in furtherance of a strike or work stoppage against plaintiff involving the pending dispute as to the stocking of frozen foods:

(a) Picketing at, around or in the vicinity of the premises of plaintiff's retail supermarket located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, State of California, or any other supermarket of plaintiff.

(b) Carrying or displaying signs or placards which state in any manner that plaintiff's employees are on strike or requesting in any manner customers or potential customers not to patronize plaintiff or its supermarkets, or which, in any manner, infer that a strike or labor dispute against or involving plaintiff is in progress.

(c) Engaging in any strike, concerted work stoppage or other economic activity at or about the premises of plaintiff's retail store located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or at any other supermarket of plaintiff.

(d) Inducing, instructing, persuading or encouraging plaintiff's employees, or any of them, to engage in a strike, work stoppage, picketing or other economic activity against plaintiff or to fail or refuse to perform their work and services in a regular and normal manner for plaintiff.

(e) From stating to or informing customers or potential customers of plaintiff that plaintiff's employees are

on strike or that plaintiff's store at 7230 Atlantic Boulevard in Cudahy, California, is closed or that there is no service in plaintiff's food store or from in any manner persuading, inducing or encouraging or attempting to persuade, induce or encourage plaintiff's customers or potential customers not to patronize plaintiff or to patronize plaintiff's competitors.

(f) From blocking, obstructing or impeding or attempting to block, obstruct or impede the ingress or egress of customers and potential customers to and from plaintiff's said store or at any other supermarket of plaintiff.

(g) From intimidating, inducing, persuading or encouraging or attempting to intimidate, induce, persuade or encourage employees of suppliers of plaintiff to refuse to deliver goods and merchandise to plaintiff's said store.

The foregoing order for Injunction shall be effective when plaintiff has given security in the sum of $1,000.00 corporate surety bond.

IT IS FURTHER ORDERED that defendant's motion to quash Superior Court Temporary Restraining Order be and hereby is denied.

DATED: March 12, 1969.

CHARLES H. CARR
UNITED STATES DISTRICT JUDGE

* * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

No. 69-337-CC

Answer.

The Defendant, RETAIL CLERKS UNION, LOCAL 770, answers the Complaint herein as follows:

1. As to each and every allegation contained in Paragraphs I, II, III, and IV; the Defendant admits thereto.

2. As to each and every allegation contained in Paragraphs V and VI of the Complaint, Defendant denies that they have any knowledge or information thereof sufficient to form a belief.

3. Defendant denies each and every allegation contained in Paragraphs VII, VIII, and IX.

4. Defendant denies each and every allegation contained in Paragraph X of the Complaint, except Defendant admits that Plaintiff has caused a telegram to be sent to the Defendant demanding that the dispute be submitted to arbitration.

5. Defendant denies each and every allegation contained in Paragraph XI.

WHEREFORE, Defendant demands judgment that the Complaint herein be dismissed and that they have their costs and disbursements of this action.

DATED: March 13, 1969.

* * *

Attorneys for Defendant

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

No. 69-337-CC

Notice of Appeal.

Notice is hereby given that Retail Clerks Union, Local 770, defendant above named, hereby abandons the Notice of Appeal filed on March 14, 1969, and instead, appeals to the United States Court of Appeals for the Ninth Circuit from the Order entitled ORDER DIRECTING THAT ARBITRATION PROCEED AND ORDER GRANTING INJUNCTION PENDING ARBITRATION signed by Judge Carr on March 12, 1969. This appeal is from each and every portion of the aforesaid Order including the Order to submit the dispute to arbitration, the Order granting plaintiff's Motion for Injunction, and the Order denying defendant's Motion to Quash Superior Court Temporary Restraining Order.

In accordance with Rule 32 of the Local Rules of the Central District of California, the names of the parties to this Order and the names and addresses of their respective attorneys are:

The Boys Markets, Inc., Appellees herein, who are represented by Joseph M. McLaughlin, Esq., Suite 700, 655 South Hope Street, Los Angeles, California 90017; Retail Clerks Union, Local 770, Appellant herein, who is represented by the Law Firm of: Arnold, Smith &

Schwartz, Suite 950, 6404 Wilshire Boulevard, Los Angeles, California 90048.

The defendant is entitled to an expedited hearing of its appeal under 29 U.S.C. §110.

DATED: March 28, 1969.

* * *

Attorneys for Defendant

(Affidavit of Service Omitted in Printing)

(Designation of Record on Appeal Omitted in Printing)

(Statement of Points on Appeal Omitted in Printing)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Boys Markets Inc., a California corporation, Appellant, vs. Retail Clerks Union, Local 770, an unincorporated association Appellee. No. .....

Transmitted Record 69-337-Judge Carr, USDC.

UPON APPEAL FROM THE UNITED
STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

The Boys Markets, Inc., a California corporation, Plaintiff, v. Retail Clerks Union, Local 770, an unincorporated association, Defendant. No. 69-337-CC

INDEX

Affidavit of Gerald A. W. Haight, filed 2/25/69.. 74
Bond for Costs on Appeal, filed 3/14/69 122
Bond on Removal, filed 2/20/69 71
Certified Copy of Statement of Docket Entries .. 133
Certificate of Service, filed 2/25/69 76
Certificate of Service by Mail, filed 4/2/69 130
Designation of Record on Appeal, filed 4/2/69 .. 126
Findings of Fact and Conclusions of Law, filed 3/13/69 112
Memorandum of Points and Authorities in Support of Motion to Quash Superior Court Temporary Restraining Order and In Support of Order Shortening Time, filed 2/25/69 78
Motion for Order Compelling Arbitration for Order Requiring Specific Performance of Agreement to Arbitrate, and Application for Preliminary Injunction, filed 3/3/69 81
Names and Addresses of Attorneys 1
Notice of Appeal, filed 4/2/69 124
Notice of Motion and Motion to Quash Superior Court Temporary Restraining Order, filed 2/25/69 80
Order Directing That Arbitration Proceed and Order Granting Injunction Pending Arbitration, filed 3/13/69 106
Order Shortening Time for Service of Notice of Motion, filed 2/24/69 73

Order Shortening Time for Service of Notice of Motion, filed 3/3/69 85

Petition for Removal together With Bond for Removal, filed 2/20/69 2

Statement on Points on Which Appellant Intends to Rely on Appeal, filed 4/2/69 128

Supplemental Designation of Record on Appeal, filed 4/10/69 131

Supplemental Memorandum of Points and Authorities in Support of Motions to Compel Arbitration, for Specific Performance, and for Preliminary Injunction, filed 3/3/69 86

Original and 2 copies of Reporter's Transcript of proceedings had on: February 4, March 10, 1969

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above entitled Court, hereby certify the documents listed herein, together with the other listed items, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above entitled case.

May 9, 1969

JOHN A. CHILDRESS, CLERK
By Carol Vasquez, Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Boys Markets, Inc., Appellee vs. Retail Clerk's Union, Local 770, Appellant. No. 24004.

Judgment.

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and that this cause be and hereby is remanded to the said District Court for further proceedings in accordance with the opinion of this Court.

Filed and entered September 26, 1969.

Opinion of the United States Court of Appeals For the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

The Boys Markets, Inc., *Appellee,* vs. Retail Clerk's Union, Local 770, *Appellant.* No. 24,004.

[September 26, 1969]

Appeal from the United States District Court for the Central District of California

Before: HAMLIN and DUNIWAY, Circuit Judges, and SMITH, District Judge*

HAMLIN, Circuit Judge

The Boys Markets, Inc., appellee herein, filed an action in California state court against the Retail Clerk's Union, Local 770, appellant herein, seeking to enjoin a strike being carried on by appellant against appellee and seeking an order for specific performance of an agreement to arbitrate. Appellant and appellee had prior thereto entered into a collective bargaining agreement which provided for arbitration of all disputes involving the interpretation of the agreement and which also contained a promise by appellant not to engage in any strike or work stoppage or any other concerted economic activity. This agreement was in effect at the time the strike was called by the appellant.

The California court issued a temporary injunction restraining the Union from striking. The Union then removed the case to the United States District Court for the Central District of California, and sought to

*Honorable Russell E. Smith, United States District Judge, Missoula, Montana, sitting by designation.

quash the injunction. After a hearing the district court issued its order enjoining the Union from striking and ordered the parties to arbitrate the dispute which had given rise to the strike. The Union appealed to this court from the district court's order. We have jurisdiction under 28 U.S.C. § 1291.

This case involves the interplay of two of the major statutes in the area of labor law, section 4 of the Norris-LaGuardia Act (29 U.S.C. § 104) and section 301 of the Labor-Management Relations Act (29 U.S.C. § 185). Section 301 provides:

> "Suits for violation of contracts between an employer and a labor orgainzation . . . may be brought in any district court of the United States."

The landmark *Lincoln Mills* decision, 353 U.S. 448 (1957), held that section 301 was not merely procedural, but rather it gave to the federal courts power to establish a body of substantive federal law. A normal adjunct of federal power, of course, is the equitable remedy of an injunction.

However, section 4 of the Norris-LaGuardia Act deprives the federal courts of jurisdiction to issue injunctions against strikes or work stoppages in most cases growing out of a labor dispute. The strike action taken by the Union in the instant case falls squarely within the proscription of section 4; this much is conceded by the appellee. The appellee's contention, which was upheld by the court below, is that section 4 does not forbid a federal court to issue an injunction where the union strike is in violation of a no-strike clause. Thus, the sole question on this appeal is whether the court below had jurisdiction to enjoin a strike where that strike is in violation of a no-strike clause.

This question has previously been answered in favor of the Union by the Supreme Court in *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962). *Sinclair* is nearly on all fours with the instant case: the employer there was attempting to enjoin a union strike where the union struck in violation of a no-strike clause. Many of the policy arguments presented by the appellee in this case were addressed to the Court in *Sinclair.* However, the Court held that it was bound by the clear language of section 4 of the Norris-LaGuardia Act, and that a federal court does not have power to enjoin a strike in most cases growing out of a labor dispute, even where that strike is in violation of a no-strike clause. See also *A. H. Bull Steamship Co. v. Seafarers' International Union,* 250 F.2d 326 (2nd Cir. 1957); *General Electric Co. v. Local Union 191,* ..... F.2d....., 71 LRRM 2903, (5th Cir. 1969).

We see nothing in *Avco Corp. v. Aero Lodge No. 735,* 390 U.S. 557 (1968), relied on by appellee, which would permit us not to follow the holding in *Sinclair.* The question decided in *Avco* was whether, after the union has petitioned for removal of an action brought by the employer in state court, the employer can remand the case to state court. The Court held that the employer could not remand the case to state court. The underlying facts of the dispute in *Avco* were very similar to the facts in *Sinclair* and the instant case, but the Court reserved consideration of the *Sinclair* question. This court therefore remains bound by the holding of *Sinclair.*[1]

[1]It is worthy of note that although the Supreme Court in *Sinclair* made it clear that Congress alone could change the result reached by the Court in that case, Congress has not yet seen fit to do so.

Appellee's reliance upon *International Longshoremen's Assn. Local 1291 v. Philadelphia Marine Trade Assn.*, 389 U.S. 64 (1968), and *New Orleans Steamship Assn. v. General Longshore Workers*, 389 F.2d 369 (5th Cir.), cert. denied, 393 U.S. 828 (1968), is misplaced. In each of these cases the order of the court was made after an arbitration award had been made. In the *Philadelphia Marine* case, the complaint had alleged that the union had refused "to abide by the terms of the arbitrator's award" and prayed for an order enforcing the arbitrator's award. In that case the Supreme Court set aside the order of the district court enforcing the award as being too vague.

In the *New Orleans Steamship Association* case, an arbitration award had been made and the action was by the Steamship Association seeking an order to enforce the award of the arbitrator. The court of appeals held that the district court had jurisdiction to enforce the award and that it erred in dismissing the complaint.

In the instant case no arbitration award has been made, and the *Sinclair* case is controlling. Accordingly, we reverse the judgment of the district court enjoining appellant's strike and remand the case for further proceedings.